UIdaho Law
Digital Commons @ UIdaho Law

Idaho Supreme Court Records & Briefs

5-13-2013

Clearwater REI, LLC v. Boling Clerk's Record Dckt. 40809

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation
"Clearwater REI, LLC v. Boling Clerk's Record Dckt. 40809" (2013). *Idaho Supreme Court Records & Briefs*. 893.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/893

This Court Document is brought to you for free and open access by Digital Commons @ UIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIdaho Law.

IN THE SUPREME COURT OF THE STATE OF IDAHO

CLEARWATER REI, LLC., an Idaho limited company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONALD D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; RON RUEBEL, an individual,

Plaintiffs-Respondents,

and

RE CAPITAL INVESTMENTS, LLC., a Delaware limited liability company,

Plaintiff,

vs.

MARK BOLING, an individual,

Defendant-Appellant.

Supreme Court Case No. 40809

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE DEBORAH A. BAIL

MARK BOLING

APPELLANT PRO SE

LAKE FOREST, CALIFORNIA

REBECCA A. RAINEY

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Date	Code	User		Judge
5/14/2012	NCOC	CCHOLMEE	New Case Filed - Other Claims	Deborah Bail
	COMP	CCHOLMEE	Complaint Filed	Deborah Bail
	SMFI	CCHOLMEE	Summons Filed	Deborah Bail
6/28/2012	ANSW	CCSWEECE	Answer to Complaint (Mark Boling Pro Se)	Deborah Bail
	TPCO	CCSWEECE	Counterclaim and Third-party Complaint For Violations of the ICPA and Breach of Guaranty	Deborah Bail
	SMFI	CCSWEECE	Summons on Counterclaim and Third Party Complaint	Deborah Bail
	NOTS	CCSWEECE	Notice Of Service	Deborah Bail
7/2/2012	HRSC	DCDOUGLI	Hearing Scheduled (Scheduling Conference 08/08/2012 03:30 PM)	Deborah Bail
		DCDOUGLI	Notice of Status Conference	Deborah Bail
7/16/2012	MOTN	CCSWEECE	Motion to Dismiss Counterclaim	Deborah Bail
	MEMO	CCSWEECE	Memorandum in Support of Motion to Dismiss Counterclaim	Deborah Bail
7/25/2012	MISC	CCTHERTL	Response to Motion to Dismiss Counterclaim	Deborah Bail
	MOTN	MCBIEHKJ	Motion for Protective Order Staying Discovery	Deborah Bail
7/27/2012	BREF	CCWRIGRM	Reply Brief in Support of Motion to Dismiss Counterclaim	Deborah Bail
	MISC	CCTHERTL	Defendant/Counter-Claimant's Opposition to Motion for Protective Order Staying Discovery	Deborah Bail
8/8/2012	CONH	CCTHERTL	Hearing result for Scheduling Conference scheduled on 08/08/2012 03:30 PM: Conference Held	Deborah Bail
8/14/2012	HRSC	CCTHERTL	Hearing Scheduled (Motion to Dismiss 09/12/2012 03:00 PM)	Deborah Bail
8/17/2012	MOTN	CCWATSCL	Motion to Stay Arbitration	Deborah Bail
	MEMO	CCWATSCL	Memorandum in Support of Motion	Deborah Bail
8/23/2012	OPPO	MCBIEHKJ	Opposition to Motion to Stay Arbitration	Deborah Bail
	MISC	MCBIEHKJ	Declaration of Mark Boling in Support of Opposition to Motion to Stay Arbitration	Deborah Bail
9/7/2012	RPLY	CCBOYIDR	Reply Memorandum in Support of Motion and Application to Stay Arbitration	Deborah Bail
9/12/2012	DCHH	CCTHERTL	Hearing result for Motion to Dismiss scheduled on 09/12/2012 03:00 PM: District Court Hearing Held Court Reporter: Susan Gambee Number of Transcript Pages for this hearing estimated: Telephonic - 50	Deborah Bail
10/16/2012	DEOP	CCTHERTL	Decision and Order Re: Motion to Stay Arbitration	Deborah Bail
10/18/2012	HRSC	DCDOUGLI	Hearing Scheduled (Status Conference 12/05/2012 03:30 PM)	Deborah Bail
		DCDOUGLI	Notice of Status Conference	Deborah Bail

Date	Code	User		Judge
11/9/2012	ANSW	CCTHIEKJ	Answer to Counterclaim	Deborah Bail
11/16/2012	NOTS	CCSWEECE	Notice Of Service	Deborah Bail
11/20/2012	NOTS	MCBIEHKJ	Notice Of Service	Deborah Bail
11/26/2012	NOTS	CCHEATJL	Notice Of Service	Deborah Bail
	STIP	MCBIEHKJ	Stipulation for Scheduling and Planning	Deborah Bail
11/29/2012	CONV	CCTHERTL	Hearing result for Status Conference scheduled on 12/05/2012 03:30 PM: Conference Vacated	Deborah Bail
12/10/2012	AFFD	CCMEYEAR	Affidavit of Mark Boling in Suppor of Defendant/Counter-Claimant's Motion to Compel Arbitration	Deborah Bail
	NOTC	CCMEYEAR	Notice of Motion and Defendant/Counter-Claimant's Motion to Compel Arbitration Memorandum of Points and Authorities in Support Thereof	Deborah Bail
12/13/2012	MOTN	MCBIEHKJ	Motion to Strike and Request Hearing Be Notice in Accordance with IRCP	Deborah Bail
	MEMO	MCBIEHKJ	Memorandum in Support of Motion to Strike	Deborah Bail
	HRSC	MCBIEHKJ	Notice of Hearing Scheduled (Motion 02/06/2013 02:00 PM)	Deborah Bail
12/14/2012	OPPO	CCHEATJL	Defendant/Counter-Claimant's Opposition ToPlaintiff's/Counterdefendants' Motion To Strike	Deborah Bail
12/28/2012	NOTS	CCPINKCN	Notice Of Service	Deborah Bail
12/31/2012	NOTC	MCBIEHKJ	Notice of Hearing (2/6/13 @ 2 pm)	Deborah Bail
1/7/2013	MOTN	CCSWEECE	Defendant/Counter-CLaimants Motion to Compel Further Responses to Interrogatory No 31 and to Demand for Production Inspection and Copying of Documents Nos 36 through 39 Inclusive	Deborah Bail
	AFSM	CCSWEECE	Affidavit of Mark Boling In Support Of Defendant/Counter-CLaimants Motion to Compel Further Responses to Interrogatory No 31 and to Demand for Production Inspection and Copying of Documents Nos 36 through 39 Inclusive; Certificate Under URCP Rule 37	Deborah Bail
	MEMO	CCSWEECE	Memorandum of Points and Authorities in Support of Defendant/Counter-CLaimants Motion to Compel Further Responses to Interrogatory No 31 and to Demand for Production Inspection and Copying of Documents Nos 36 through 39 Inclusive	Deborah Bail
	NOHG	CCSWEECE	Notice Of Hearing On Motion to Compel February 6, 2013 @ 2:00 PM	Deborah Bail
1/30/2013	AFFD	CCTHIEKJ	Affidavit of Rebecca A. Rainey in Support of Opposition to Motion to Compel Discovery	Deborah Bail
	MEMO	CCTHIEKJ	Memorandum in Opposition of Motion to Compel Discovery	Deborah Bail
	MEMO	CCTHIEKJ	Memorandum in Opposition of Motion to Compel Arbitration	Deborah Bail

Date	Code	User		Judge
2/1/2013	RPLY	CCHEATJL	Defendant/Counter-Claimant's Reply To Counterdefendants' Opposition To Motion To Compel	Deborah Bail
	RPLY	CCHEATJL	Defendant/Counter-Claimant's Reply To Counterdefendants' Opposition To Motion To Compel Arbitration	Deborah Bail
	MOTN	MCBIEHKJ	Motion for Judgment on the Pleadings	Deborah Bail
	MEMO	MCBIEHKJ	Memorandum in Support of Motion	Deborah Bail
2/6/2013	DCHH	CCTHERTL	Hearing result for Motion scheduled on 02/06/2013 02:00 PM: District Court Hearing Hel Court Reporter: Susan Gambee Number of Transcript Pages for this hearing estimated: 50	Deborah Bail
2/7/2013	DEOP	CCTHERTL	Second Decision and Order Re: Motion to Stay Arbitration and 54(b) Certificate	Deborah Bail
2/14/2013	STAT	CCTHERTL	STATUS CHANGED: inactive	Deborah Bail
2/28/2013	NOTS	MCBIEHKJ	Notice Of Service	Deborah Bail
3/11/2013	APSC	CCTHIEBJ	Appealed To The Supreme Court	Deborah Bail
	NOTA	CCTHIEBJ	NOTICE OF APPEAL	Deborah Bail
3/20/2013	ORDR	CCTHIEBJ	Order: Remanded to District Court for Entry of IRCP 54(a) Final Judgment - Supreme Court Docket No. 40809	Deborah Bail
3/26/2013	ORDR	CCTHIEBJ	Order Withdrawing Order Remanding to District Court - Supreme Court Docket No. 40809	Deborah Bail
5/1/2013	NOTC	CCTHIEBJ	Notice of Transcript Lodged - Supreme Court Docket No. 40809	Deborah Bail

Rebecca A. Rainey, ISB No. 7525
RAINEY LAW OFFICE
910 W. Main St. Ste. 258
Boise, ID 83702
Phone: (208) 258-2061
Facsimile: (208) 473-2952
rar@raineylawoffice.com

NO. 5
A.M. FILED P.M.
MAY 14 2012
CHRISTOPHER D. RICH, Clerk
By ELYSHIA HOLMES
DEPUTY

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, an Idaho limited liability company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONDAL D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; RON RUEBEL, an individual; RE CAPITAL INVESTMENTS, LLC, a Delaware limited liability company,

Plaintiffs,

vs.

MARK BOLING, an individual,

Defendant.

CV OC 1208669

Case No.: _____

COMPLAINT AND APPLICATION FOR ORDER STAYING ARBITRATION

COMES NOW, the above named Plaintiffs, Clearwater REI, LLC; RE Capital, LLC; Barton Cole Cochran, an individual; Chad James Hansen, an individual; Ronald D. Meyer, an individual; Christopher J. Benak, an individual; and Rob Ruebel, an individual, by and through the undersigned counsel of record, and hereby complains and applies to this Court for an order staying arbitration as follows:

PARTIES

1. Plaintiff Clearwater REI, LLC, is an Idaho limited liability company.

2. Plaintiff RE Capital Investments, LLC, is a Delaware limited liability company;

3. Plaintiff Barton Cole Cochran is an individual residing Idaho.

4. Plaintiff Chad James Hansen is an individual Idaho.

5. Plaintiff Ronald D. Meyer is an individual residing in California.

6. Plaintiff Christopher J. Benak is an individual residing in California.

7. Plaintiff Rob Ruebel is an individual residing in Idaho.

8. Defendant Mark Boling ("Boling") is an individual residing in Lake Forest, California.

JURISDICTION AND VENUE

9. The amount in controversy exceeds the minimum jurisdictional requirements of this court.

10. Jurisdiction is proper pursuant to Idaho Code § 7-902 and § 7-917.

11. Venue is proper pursuant to Idaho Code § 7-918.

CLAIM FOR RELIEF

12. Demand has been made upon the above named Plaintiffs for arbitration. Such Plaintiffs are not signatories to any arbitration agreement.

13. On February 12, 2010, Defendant Boling submitted a Subscription Agreement to Clearwater 2008 Note Program, LLC, an Idaho limited liability company.

14. The Subscription Agreement was signed by Defendant Boling and by Clearwater REI, LLC as agents for Clearwater 2008 Note Program, LLC, an Idaho limited liability company.

15. A true and correct copy of the subscription agreement is attached hereto as **Exhibit A.**

16. The Subscription Agreement included an arbitration provision.

17. Pursuant to the arbitration provision of paragraph 11 of the subscription agreement, Boling filed a demand for arbitration with the American Arbitration Association on February 15, 2012.

18. In addition to Clearwater 2008 Note Program, LLC, the entity that is a party to the agreement containing the arbitration provision, such demand for arbitration also listed as respondents all of the Plaintiffs herein: Plaintiffs Clearwater REI, LLC; **Clearwater Real Estate Investments, a.k.a. Clearwater Real Estate Investments, LLC, an unknown business entity**; RE Capital, LLC, an unknown business entity; Barton Cole Cochran, an individual; Chad James Hansen, an individual; Ronald D. Meyer, an individual; Christopher J. Benak, an individual; and Rob Ruebel, an individual, as respondents, collectively referred to as **"Plaintiffs."**

19. A true and correct copy of the demand for arbitration is attached hereto as **Exhibit B.**

20. Because none of the plaintiffs identified herein are parties to an agreement containing an arbitration provision, each plaintiff is entitled to an order staying the arbitration proceedings as to them.

ATTORNEY'S FEES AND COSTS

21. Plaintiffs have been required to retain the services of counsel to prosecute this matter and are entitled to their reasonable costs and attorneys fees pursuant to Idaho Code § 12-121 and Rule 54 of the Idaho Rules of Civil Procedure.

DATED this 14th day of May, 2012.

RAINEY LAW OFFICE

Rebecca A. Rainey – Of the Firm
Attorneys for Defendants

Exhibit A

PPM BOOK NUMBER

08Note-A238

INSTRUCTIONS TO INVESTORS

Clearwater 2008 Note Program, LLC
9.0% Notes Due December 31, 2015

Please read carefully the Private Placement Memorandum dated August 18, 2008 for the sale of $20,000,000 (subject to increase to $40,000,000) in aggregate principal amount of 9.0% Notes due December 31, 2015 ("Notes") issued by Clearwater 2008 Note Program, LLC, an Idaho limited liability company ("Company"), as supplemented from time to time, and all Exhibits thereto (collectively, the "Memorandum"), before deciding to subscribe. Capitalized terms not defined herein have the meanings set forth in the Memorandum.

Each prospective investor in Notes should examine the suitability of this type of investment in the context of his/her own needs, investment objectives and financial capabilities and should make his/her own independent investigation and decision as to suitability and as to the risk and potential gain involved. Also, each prospective investor in Notes is encouraged to consult with his/her attorney, accountant, financial consultant or other business or tax advisor regarding the risks and merits of the proposed investment.

This Offering is limited to investors who certify that they meet all of the qualifications set forth in the Memorandum for the purchase of Notes.

If you meet these qualifications and desire to purchase Notes, then please complete, execute and deliver the attached Subscription Agreement along with your check, payable to "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC" in the amount of the Subscription Payment.

Subscription Agreements and all attachments should be mailed or delivered to the Company at:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

All funds should be mailed, delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

Wire Instructions:
Account Number: [redacted]
Routing/ABA Number: [redacted]
Account Name: Clearwater 2008 Note Program, LLC

Upon receipt of this signed Subscription Agreement, verification of your investment qualifications and acceptance of your subscription by the Company (the Company reserves the right, in its sole discretion, to accept or reject a subscription for any or no reason whatsoever), the Company will notify you of receipt and acceptance of your subscription.

<u>Important Note</u>: The person or entity actually making the decision to invest in Notes should complete and execute this Subscription Agreement. For example, retirement plans often hold certain investments in trust for their beneficiaries, but the beneficiaries may maintain investment control and discretion. In such a situation, the beneficiary with investment control must complete and execute this Subscription Agreement (this also applies to trusts, custodial accounts and similar arrangements).

INTERNAL USE ONLY
Date Rec'd: 2/24/10
By:

000009

SUBSCRIPTION AGREEMENT

Clearwater 2008 Note Program, LLC
9.0% Notes Due December 31, 2015

This is the offer and agreement ("Subscription Agreement") of the undersigned to purchase $50,000.00 ($50,000 minimum investment) in principal amount of 9.0% Notes due December 31, 2015 ("Notes") to be issued by Clearwater 2008 Note Program, LLC, an Idaho limited liability company (the "Company") ("Subscription Price"), subject to the terms, conditions, acknowledgments, representations and warranties stated herein and in the Confidential Private Placement Memorandum relating to the offer of up to $20,000,000 (subject to increase to $40,000,000) in aggregate principal amount in Notes dated August 29, 2008, as supplemented from time to time (the "Memorandum"). I am including with this Subscription Agreement a check payable to the order of "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC" in the amount of $50,000.00, representing the Subscription Price for the Notes I am purchasing. All terms utilized herein shall have the same meaning as set forth in the Memorandum.

In order to induce the Company to accept this Subscription Agreement for Notes and as further consideration for such acceptance, I hereby make the following acknowledgments, representations and warranties with the full knowledge that the Company will expressly rely thereon in making a decision to accept or reject this Subscription Agreement:

1. I hereby adopt, confirm and agree to all of the covenants, representations and warranties set out in this Subscription Agreement.
2. My primary state of [redacted]
3. My date of birth is: [redacted].
4. If I am a natural person, I hereby represent and warrant that (check as appropriate):
   (a) _X_ I, together with my spouse, have a net worth, inclusive of home, home furnishings and personal automobiles, in excess of $1,000,000; or
   (b) _____ I have individual income in excess of $200,000, or joint income with my spouse, in excess of $300,000, in each of the two most recent years, and I reasonably expect individual or joint income in excess of that amount in the current year.
5. If other than a natural person, such entity represents and warrants that (check as appropriate):
   _____ it is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.
6. If other than a natural person, is such entity a benefit plan qualified under Code Section 401(a), a benefit plan subject to ERISA, an individual retirement account or arrangement under Code Section 408 or any other company sponsored employee benefit plan or program?
   _____ Yes. _____ No.
7. Neither I nor any subsidiary, affiliate, owner, shareholder, partner, member, indemnitor, guarantor or related person or entity:
   (a) is a Sanctioned Person (as defined below);
   (b) has more than 15% of its assets in Sanctioned Countries (as defined below); or
   (c) derives more than 15% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries.

   For purposes of the foregoing, a "Sanctioned Person" shall mean (a) a person named on the list of "specially designated nationals" or "blocked persons" maintained by the U.S. Office of Foreign Assets Control ("*OFAC*") at *http://www.treas.gov/offices/eotffc/ofac/sdn/index.html*, or as otherwise published from time to time, or (b) (1) an agency of the government of a Sanctioned Country, (2) an organization controlled by a Sanctioned Country, or (3) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. A "Sanctioned Country" shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available at *http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html*, or as otherwise published from time to time.
8. Under penalties of perjury, I certify (a) that the number shown on this form is my correct taxpayer identification number and (b) that I am not subject to backup withholding, either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends or the Internal Revenue Service has notified me that I am no longer subject to backup withholding. **(Please strike out the language certifying that you are not subject to backup withholding due to notified payee under-reporting if you have been notified that you are subject to backup withholding due to notified payee under-reporting, and you have not**

received a notice from the Internal Revenue Service advising you that backup withholding has terminated.)

9. I further represent and warrant that such investment is not disproportionate to my income or available liquid funds and that I further have the capacity to protect my interests in connection with the purchase of the Notes.

10. I (we) wish to own my (our) Notes as follows (check one):

X (a) Separate or individual property. (In community property states, if the purchaser is married, his (her) spouse must submit written consent if community funds will be used to purchase the Notes.)

____ (b) Husband and Wife as community property. (Community property states only. Husband and Wife should both sign all required documents unless advised by their attorney that one signature is sufficient.)

____ (c) Joint Tenants with right of survivorship. (Both parties must sign all required documents unless advised by their attorneys that one signature is sufficient.)

____ (d) Tenants in Common. (Both parties must sign all required documents.)

____ (e) Trust. (Attach copy of trust instrument and include name of trust, name of trustee and date trust was formed.)

____ (f) Partnership or Limited Liability Company. (Attach copy of articles or certificate, if any, and partnership agreement or operating agreement and include evidence of authority for person who executes required documents.)

____ (g) Husband and Wife with right of survivorship. (Husband and wife should sign all documents unless other advised by their attorney.)

____ (h) IRA or Qualified Plan:

_____

____ (i) Other (indicate):

_____

_____

11. If the owner of Notes is an entity (trust, LLC, Partnership, etc.) my relationship to the owning entity is _____ (trustee, owner, partner, etc.)

Subscriber's Signature: X Mark Boling Date: 2/12/10

Subscriber's Signature: X_____ Date: _____

1. I understand that in the event this Subscription Agreement is not accepted or, if accepted, the Offering is subsequently terminated or cancelled then the funds transmitted herewith shall be returned to the undersigned and this Subscription Agreement shall be terminated and of no further effect. RE Capital, LLC has agreed to guarantee the repayment of principal under the Notes. By executing this Subscription Agreement, each prospective investor of Notes approves the foregoing, acknowledges the risks described in the section of the Memorandum entitled "Risk Factors," and waives those provisions of the Securities Exchange Act of 1934, as amended, generally governing funds held in escrow prior to closing an offering.

2. I acknowledge that I have received, read and fully understand the Memorandum. I acknowledge that I am basing my decision to invest in Notes on the Memorandum and I have relied only on the information contained in said materials and have not relied upon any representations made by any other person. I recognize that an investment in Notes involves substantial risk and I am fully cognizant of and understand all of the risk factors related to the purchase of Notes, including, but not limited to, those risks set forth in the sections of the Memorandum entitled "Risk Factors."

3. My overall commitment to investments that are not readily marketable is not disproportionate to my individual net worth, and my investment in Notes will not cause such overall commitment to become excessive. I have adequate means of providing for my financial requirements, both current and anticipated, and have no need for liquidity in this investment. I can bear and am willing to accept the economic risk of losing my entire investment in Notes.

4. I acknowledge that the sale of Notes has not been accompanied by the publication of any advertisement, any general solicitation or as the direct result of an investment seminar sponsored by the Company or any of its Affiliates.

5. All information that I have provided to the Company herein concerning my suitability to invest in Notes is complete, accurate and correct as of the date of my signature on the last page of this Subscription Agreement. I hereby agree to notify the Company immediately of any material change in any such information occurring prior to the acceptance of this Subscription Agreement, including any information about changes concerning my net worth and financial position.

6. I have had the opportunity to ask questions of, and receive answers from, the Company and the Manager concerning the Company, the creation or operation of the Company or terms and conditions of the offering of Notes, and to obtain any additional information deemed necessary to verify the accuracy of the information contained in the Memorandum. I have been

provided with all materials and information requested by either me or others representing me, including any information requested to verify any information furnished to me.

7. I am purchasing Notes for my own account and for investment purposes only and have no present intention, understanding or arrangement for the distribution, transfer, assignment, resale or subdivision of Notes. I understand that, due to the restrictions referred to in Paragraph 8 below, and the lack of any market existing or to exist for Notes, my investment in the Company will be highly illiquid and may have to be held indefinitely.

8. I am fully aware that Notes subscribed for hereunder have not been registered with the Securities and Exchange Commission in reliance on an exemption specified in Regulation D under the Securities Act of 1933, as amended, which reliance is based in part upon my representations set forth herein. I understand that Notes subscribed for herein have not been registered under applicable state securities laws and are being offered and sold pursuant to the exemptions specified in said laws, and unless they are registered, they may not be re-offered for sale or resold except in a transaction or as a security exempt under those laws. I further understand that the specific approval of such resales by the state securities administrator may be required in some states. **Notes have not been approved or disapproved by the United States Securities and Exchange Commission or other regulatory authority, nor have any of the foregoing authorities passed upon or endorsed the merits of this Offering or the accuracy or adequacy of the Memorandum. Any representation to the contrary is unlawful.**

9. I acknowledge that Home Federal Bank is acting solely as escrow holder in connection with the Offering of Notes, and makes no recommendations with respect thereto. I understand that Home Federal Bank has made no investigation regarding the Offering, Notes, the Company, the Manager, their Affiliates or their officers and directors, or any other person or entity involved in the Offering.

10. This Subscription Agreement shall be construed in accordance with and governed by the laws of the State of Idaho without regard to its choice of law provisions.

11. I hereby covenant and agree that any dispute, controversy or other claim arising under, out of or relating to this Agreement or any of the transactions contemplated hereby, or any amendment thereof, or the breach or interpretation hereof or thereof, shall be determined and settled in binding arbitration in Boise, Idaho, in accordance with applicable Idaho law, and with the rules and procedures of The American Arbitration Association. The prevailing party shall be entitled to an award of its reasonable costs and expenses, including, but not limited to, attorneys' fees, in addition to any other available remedies. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives, and judgment may be entered thereon in any court of competent jurisdiction. **BY EXECUTING THIS AGREEMENT, YOU ARE AGREEING TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE SUCH DISPUTES LITIGATED IN A COURT OR JURY TRIAL, AND YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE. BY EXECUTING THIS AGREEMENT, YOU HEREBY CONFIRM THAT YOUR AGREEMENTS TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

12. **I hereby agree to indemnify, defend and hold harmless the Company, the Manager, their Affiliates and all of their members, managers, shareholders, officers, employees, affiliates and advisors, from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that they may incur by reason of my failure to fulfill all of the terms and conditions of this Subscription Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished to any of the foregoing in connection with this transaction. This indemnification includes, but is not limited to, any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) incurred by the Company, the Manager, their Affiliates and any of their members, managers, shareholders, directors, officers, employees, affiliates or advisors, defending against any alleged violation of federal or state securities laws which is based upon or related to any untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished in connection with this transaction.**

13. I hereby acknowledge and agree that : (a) I may not transfer or assign this Subscription Agreement, or any interest herein, and any purported transfer shall be void; (b) except as specifically described herein, I am not entitled to cancel, terminate or revoke this Subscription Agreement and that this Subscription Agreement will be binding on my heirs, successors and personal representatives; provided, however, that if the Company rejects this Subscription Agreement, this Subscription Agreement shall be automatically canceled, terminated and revoked; (c) this Subscription Agreement and the Memorandum, together with all attachments and exhibits thereto, constitute the entire agreement among the parties hereto with respect to the sale of Notes and may be amended, modified or terminated only by a writing executed by all parties (except as provided herein with respect to rejection of this Subscription Agreement by the Company); (d) within two days after receipt of a written request from the Company, the undersigned agrees to provide such information and to execute and deliver such documents as may be necessary to comply with any and all laws and regulations to which the Company is subject; and (e) the representations and warranties of the undersigned set forth herein shall survive the sale of Notes pursuant to this Subscription Agreement.

14. I am not making this investment in any manner as a representative of a charitable remainder unitrust or a charitable remainder trust.

Initial Here_____ Initial Here_____

(SPECIAL INSTRUCTIONS: In all cases, the person/entity making the investment decision to purchase Notes must complete and sign the Subscription Agreement. For example, if the form of ownership designated above is a retirement plan for which investments are directed or made by a third party trustee, then that third party trustee must complete this Subscription Agreement rather than the beneficiaries under the retirement plan. Investors must list their principal place of residence rather than their office or other address on the signature page so that the Company can confirm compliance with appropriate securities laws. If you wish correspondence sent to some address other than your principal residence, please provide a mailing address in the blank provided below. Additionally, in an attempt to expedite the delivery of material information, the Company asks (but does not require) that you list a secondary contact source that may be able to reach you, if you are unavailable through any other reasonable means listed below.)

IN WITNESS WHEREOF, I (we) has executed this Subscription Agreement this 12 day of February, ~~200~~ 2010.

A. REGISTRATION INFORMATION or CUSTODIAN INFORMATION (if applicable)
Send ALL paperwork directly to the custodian

Please print the exact name (registration) investor desires on account:
MARK Boling

Mailing address: 21986 Cayuga Lane
Lake Forest, CA 92630

E-mail address: maboling@earthlink.net

B. INVESTOR INFORMATION

Please send all investor correspondence to the following:

Name: MARK Boling

Address: 21986 Cayuga Lane, Lake Forest, CA 92630

Investor Phone: Business ([redacted]) Home: ([redacted])

Investor Fax: Business ([redacted]) Home: ([redacted])

Primary State of Residence: California

Social Security or Federal Tax ID Number: [redacted]

C. SECONDARY CONTACT INFORMATION (OPTIONAL)

If the Company is unable to contact the Subscriber directly through any reasonable means provided by the Subscriber hereby, please contact the following individual who will be instructed by Subscriber to inform him/her that Subscriber should contact the Company as expeditiously as possible:

Secondary Contact Name: Patricia Mocella

Secondary Contact Address: 21986 Cayuga Lane, Lake Forest, CA 92630

Secondary Contact Phone: Business (____) Home: ([redacted])

Secondary Contact Fax: Business (____) Home: ([redacted])

D. ELECTION TO PARTICIPATE IN INTEREST REINVESTMENT PROGRAM

If you wish to participate in the Interest Reinvestment Program, please initial here: _____

If you wish to receive monthly distributions of interest, please initial here: VMB

You will have the opportunity once annually to change your election by giving written notice thereof to the Company no later than November 30th in the year prior to the election year.

E. SIGNATURES

THE UNDERSIGNED HAS THE AUTHORITY TO ENTER INTO THIS SUBSCRIPTION AGREEMENT ON BEHALF OF THE PERSON(S) OR ENTITY REGISTERED IN A. ABOVE.

Executed this 12 day of February, ~~200~~ 2010, at Lake Forest, CA

X Mark Boling
Signature (Investor, or authorized signatory)

X _____
Signature (Investor, or authorized signatory)

F. SUBMIT SUBSCRIPTION

Mail the executed Subscription Agreement to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

The check (make payable to "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC") or funds should be wired, mailed or delivered to:

All funds should be delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

Wire Instructions:

Account Number: [redacted]
Routing/ABA Number: [redacted]
Account Name: Clearwater 2008 Note Program, LLC

Subscription Accepted:

Clearwater 2008 Note Program, LLC

By: Clearwater REI, LLC
an Idaho limited liability company
Its: Manager

By: _____ Date: 2/26/10

Name: Bart Cochran

Its: Mgr

BROKER/DEALER REPRESENTATIONS AND WARRANTIES

Purchaser suitability requirements have been established by "Clearwater 2008 Note Program, LLC" (the "Project") and fully disclosed in its Private Placement Memorandum dated August 29, 2008 (the "Memorandum") under "Who May Invest." Before recommending purchase of membership interests in the Project being offered pursuant to the Memorandum (the "Interests"), we have reasonable grounds to believe, on the basis of information supplied by the subscriber concerning his, her or its investment objectives, other investments, financial situation and needs, and other pertinent information that: (i) the subscriber is an accredited investor as defined in Section 501(a) of Regulation D and meets the investor suitability requirements set forth in the Memorandum; (ii) the subscriber has a net worth and income sufficient to sustain the risks inherent in the Interests, including loss of investment and lack of liquidity; and (iii) the Interests are otherwise a suitable investment for the subscriber. We will maintain in our files documents disclosing the basis upon which the suitability of this subscriber was determined.

We verify that the above subscription either does not involve a discretionary account or, if so, that the subscriber's prior written approval was obtained relating to the liquidity and marketability of the Interests during the term of the purchase.

Broker/Dealer Firm Name Independent Financial Group, LLC

Registered Representative Name Marna J. Hart

Registered Representative's BRANCH ADDRESS 7700 IRVINE CENTER Dr. #800 IRVINE, CA 92618

Representative Phone Number ([redacted]

Representative Facsimile Number ([redacted]

Representative Email Address: mhart@marnahart.com

Broker/Dealer Firm BRANCH Phone Number: ([redacted]

Broker/Dealer Firm BRANCH Facsimile Number: ([redacted]

The Registered Representative Firm is licensed in the state in which the investor resides: Yes ____/No ____

Marna J. Hart

Registered Representative Signature

Broker Dealer Authorized Principal

Print Name

Exhibit B

MARK A. BOLING
21986 Cayuga Lane
Lake Forest, CA 92630
(949) 588-9222 - (949) 588-7078 [fax]

February 15, 2012

FACSIMILE ONLY

TO:
Clearwater 2008 Note Program, LLC, an Idaho limited liability company
Clearwater REI, LLC, an Idaho limited liability company
Clearwater Real Estate Investments, aka Clearwater Real Estate Investments, LLC, an unknown business entity
RE Capital Investments, LLC, an unknown business entity
Barton Cole Cochran, an individual
Chad James Hansen, an individual
Ronald D. Meyer, an individual
Christopher J. Benak, an individual
Rob Ruebel, an individual

1300 E. State Street, Suite 103
Eagle, ID 83616
Fax #: 208-939-1431

FROM: MARK BOLING

RE: *Demand for Arbitration*

Total number of Pages Transmitted (including this one): 4

If you do not receive all of the pages, please call as soon as possible.

Message:

Enclosed is Claimant's Demand for Arbitration, List of Respondents and arbitration clause from the Subscription Agreement accepted on February 26, 2010.

NOTICE

This message is intended only for the individual or entity to which it is addressed and may contain information that is privileged, confidential, or exempt from disclosure. If the recipient of this message is not the addressee, or a person authorized to receive this message for the addressee, then you are hereby notified that all protections applicable to this information remain in effect and that any retention, dissemination, distribution or copying of this communication is prohibited. If you received this communication in error, please destroy this facsimile and notify the sender by telephone. Thank you.

American Arbitration Association
Dispute Resolution Services Worldwide

COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION

MEDIATION: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box. ☐
There is no additional administrative fee for this service.

Name of Respondent			Name of Representative (if known)		
See Attached List of Respondents			Unknown		
Address			Name of Firm (if applicable)		
1300 E. State Street, Suite 103					
			Representative's Address		
City	State	Zip Code	City	State	Zip Code
Eagle	ID	83616-			
Phone No.		Fax No.	Phone No.		Fax No.
(208) 639-4488		(208) 939-1431			
Email Address:			Email Address:		
InvestorServices@ClearwaterREI.com					

The named claimant, a party to an arbitration agreement dated 2/26/2010, which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

THE NATURE OF THE DISPUTE

Violations of the Idaho Consumer Protection Act against all named Respondents, Breach of Agreement against Clearwater 2008 Note Program, LLC, Breach of Guaranty against RE Capital Investments, LLC arising from Claimant's purchase and periodic payment of a 9 % Note. Failure to make timely interest and redemption principal payments. Failure to timely provide all material documents before submitting Subscription Agreement. Tendency to mislead in and the untimely disclosure of financial documents.

Dollar Amount of Claim $50,000.00

Other Relief Sought: ☐ Attorneys Fees ☒ Interest ☒ Arbitration Costs ☒ Punitive/ Exemplary ☒ Other Late Charges

Amount Enclosed $ 975.00 In accordance with Fee Schedule: ☐Flexible Fee Schedule ☒Standard Fee Schedule

PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR(S) TO BE APPOINTED TO HEAR THIS DISPUTE:
Experienced in the Idaho Consumer Protection Act and contract law.

Hearing locale Boise, Idaho (check one) ☐ Requested by Claimant ☒ Locale provision included in the contract

Estimated time needed for hearings overall:
____ hours or 1.00 days

Type of Business: Claimant Consumer
Respondent Real Estate Investments

Is this a dispute between a business and a consumer? ☒Yes ☐ No Does this dispute arise out of an employment relationship? ☐ Yes ☒ No

If this dispute arises out of an employment relationship, what was/is the employee's annual wage range? Note: This question is required by California law. ☐Less than $100,000 ☐ $100,000 - $250,000 ☐ Over $250,000

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Signature (may be signed by a representative) Date:			Name of Representative		
Mark Boling 2/15/2012			None		
Name of Claimant			Name of Firm (if applicable)		
Mark Boling					
Address (to be used in connection with this case)			Representative's Address		
21986 Cayuga Lane					
City	State	Zip Code	City	State	Zip Code
Lake Forest	CA	92630-			
Phone No.		Fax No.	Phone No.		Fax No.
949-588-9222		949-588-7078			
Email Address:			Email Address:		
maboling@earthlink.net					

To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. Send the original Demand to the Respondent.

Please visit our website at www.adr.org if you would like to file this case online. AAA Case Filing Services can be reached at 877-495-4185.

Boling v. Clearwater 2008 Note Program, LLC, et al.

Attachment to Demand for Arbitration

List of Respondents:

Clearwater 2008 Note Program, LLC, an Idaho limited liability company

Clearwater REI, LLC, an Idaho limited liability company

Clearwater Real Estate Investments, aka Clearwater Real Estate Investments, LLC, an unknown business entity

RE Capital Investments, LLC, an unknown business entity

Barton Cole Cochran, an individual

Chad James Hansen, an individual

Ronald D. Meyer, an individual

Christopher J. Benak, an individual

Rob Ruebel, an individual

provided with all materials and information requested by either me or others representing me, including any information requested to verify any information furnished to me.

7. I am purchasing Notes for my own account and for investment purposes only and have no present intention, understanding or arrangement for the distribution, transfer, assignment, resale or subdivision of Notes. I understand that, due to the restrictions referred to in Paragraph 8 below, and the lack of any market existing or to exist for Notes, my investment in the Company will be highly illiquid and may have to be held indefinitely.

8. I am fully aware that Notes subscribed for hereunder have not been registered with the Securities and Exchange Commission in reliance on an exemption specified in Regulation D under the Securities Act of 1933, as amended, which reliance is based in part upon my representations set forth herein. I understand that Notes subscribed for herein have not been registered under applicable state securities laws and are being offered and sold pursuant to the exemptions specified in said laws, and unless they are registered, they may not be re-offered for sale or resold except in a transaction or as a security exempt under those laws. I further understand that the specific approval of such resales by the state securities administrator may be required in some states. **Notes have not been approved or disapproved by the United States Securities and Exchange Commission or other regulatory authority, nor have any of the foregoing authorities passed upon or endorsed the merits of this Offering or the accuracy or adequacy of the Memorandum. Any representation to the contrary is unlawful.**

9. I acknowledge that Home Federal Bank is acting solely as escrow holder in connection with the Offering of Notes, and makes no recommendations with respect thereto. I understand that Home Federal Bank has made no investigation regarding the Offering, Notes, the Company, the Manager, their Affiliates or their officers and directors, or any other person or entity involved in the Offering.

10. This Subscription Agreement shall be construed in accordance with and governed by the laws of the State of Idaho without regard to its choice of law provisions.

11. I hereby covenant and agree that any dispute, controversy or other claim arising under, out of or relating to this Agreement or any of the transactions contemplated hereby, or any amendment thereof, or the breach or interpretation hereof or thereof, shall be determined and settled in binding arbitration in Boise, Idaho, in accordance with applicable Idaho law, and with the rules and procedures of The American Arbitration Association. The prevailing party shall be entitled to an award of its reasonable costs and expenses, including, but not limited to, attorneys' fees, in addition to any other available remedies. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives, and judgment may be entered thereon in any court of competent jurisdiction. **BY EXECUTING THIS AGREEMENT, YOU ARE AGREEING TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE SUCH DISPUTES LITIGATED IN A COURT OR JURY TRIAL, AND YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE. BY EXECUTING THIS AGREEMENT, YOU HEREBY CONFIRM THAT YOUR AGREEMENTS TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

12. **I hereby agree to indemnify, defend and hold harmless the Company, the Manager, their Affiliates and all of their members, managers, shareholders, officers, employees, affiliates and advisors, from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that they may incur by reason of my failure to fulfill all of the terms and conditions of this Subscription Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished to any of the foregoing in connection with this transaction. This indemnification includes, but is not limited to, any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) incurred by the Company, the Manager, their Affiliates and any of their members, managers, shareholders, directors, officers, employees, affiliates or advisors, defending against any alleged violation of federal or state securities laws which is based upon or related to any untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished in connection with this transaction.**

13. I hereby acknowledge and agree that : (a) I may not transfer or assign this Subscription Agreement, or any interest herein, and any purported transfer shall be void; (b) except as specifically described herein, I am not entitled to cancel, terminate or revoke this Subscription Agreement and that this Subscription Agreement will be binding on my heirs, successors and personal representatives; provided, however, that if the Company rejects this Subscription Agreement, this Subscription Agreement shall be automatically canceled, terminated and revoked; (c) this Subscription Agreement and the Memorandum, together with all attachments and exhibits thereto, constitute the entire agreement among the parties hereto with respect to the sale of Notes and may be amended, modified or terminated only by a writing executed by all parties (except as provided herein with respect to rejection of this Subscription Agreement by the Company); (d) within two days after receipt of a written request from the Company, the undersigned agrees to provide such information and to execute and deliver such documents as may be necessary to comply with any and all laws and regulations to which the Company is subject; and (e) the representations and warranties of the undersigned set forth herein shall survive the sale of Notes pursuant to this Subscription Agreement.

14. I am not making this investment in any manner as a representative of a charitable remainder unitrust or a charitable remainder trust.

Initial Here_____ Initial Here_____

RECEIVED
JUN 2 8 2012
Ada County Clerk

NO.
A.M. FILED P.M. 12
JUN 28 2012
CHRISTOPHER D. RICH, Clerk
By CHRISTINE SWEET
DEPUTY

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630
(949) 588-9222
(949) 588-7078 [fax]
maboling@earthlink.net
Defendant/Cross-Complainant, in pro per

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, et al.

Plaintiffs,

vs.

MARK BOLING,

Defendant,

Case No.: CV OC 1208669

ANSWER TO COMPLAINT

CATEGORY I (1) FILING FEE: $58

COMES NOW Defendant Mark Boling to Answer the Complaint as follows:

ANSWER TO COMPLAINT

1. Defendant admits the following allegations in paragraphs: 8, 14, 16, 17, 18, and 19.

2. Defendant has insufficient information or belief to respond to the following paragraphs and therefore denies the allegations in each paragraph: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 15, 20 and 21.

3. In paragraph 12, Defendant admits "Demand has been made upon the above named Plaintiffs for arbitration." Except for said admission, Defendant has insufficient information or belief to respond to the remaining allegations of said paragraph and therefore denies the remaining allegations of said paragraph.

AFFIRMATIVE DEFENSES

4. As a first affirmative defense to the Complaint, Defendant is informed and believes, and on the basis of that information and belief alleges, that neither the Complaint nor any purported claim alleged by Plaintiffs against Defendant states facts sufficient to constitute a claim against Defendant.

5. As a second affirmative defense to the Complaint, Defendant alleges that Plaintiffs' purported claims are barred by the failure of conditions precedent, concurrent and/or subsequent.

6. As a third affirmative defense to the Complaint, Defendant alleges that to the extent Plaintiffs failed to mitigate their alleged remedies, any remedies awarded to Plaintiffs should be barred or reduced accordingly.

7. As a fourth affirmative defense to the Complaint, Defendant alleges that Plaintiffs failed to act in good faith or to deal fairly with the Defendant by failing to provide sufficient and timely information before or after a demand for arbitration was made.

8. As a fifth affirmative defense to the Complaint, Defendant alleges that Plaintiffs' purported claims are barred, in whole or in part, by the equitable doctrines of waiver, estoppel, laches, and/or unclean hands.

9. As a sixth affirmative defense to the Complaint, Defendant is informed and believes, and on the basis of that information and belief alleges, that by their acts and omissions, Plaintiffs expressly and/or impliedly consented and/or acquiesced in whole or in part to the alleged conduct and/or behavior of Defendant.

10. As an seventh affirmative defense to the Complaint, Defendant is informed and believes, and on the basis of that information and belief alleges, that Plaintiffs were at fault in and about the matters referred to in the Complaint. Plaintiffs' failure to exercise reasonable care was the proximate cause and contributed to the damages complained, if any.

11. Further, any fault not contributed by the Plaintiffs was a result of fault on the part of persons and/or entities other than Defendant. Such fault bars and/or proportionally reduces any recovery by Plaintiffs against Defendant.

12. As a eighth affirmative defense to the Complaint, Defendant is informed and believes, and on the basis of that information and belief alleges, that the action, and each claim therein is barred because Defendant performed, satisfied, discharged and/or extinguished all duties and obligations he may have owed, if any, to Plaintiffs and/or third parties arising out of any and all agreements, representations or contracts, whether written or oral.

PRAYER

WHEREFORE, Defendant prays that judgment be entered in his favor and against Plaintiffs as follows:

1. That Plaintiffs are not entitled to any recovery under the Complaint;

2. That Defendant is awarded his attorneys' fees, if any, and costs to defend the Complaint; and

3. That Defendant is awarded such other and further relief as the Court may deem just and proper.

Dated: June 25, 2012

Mark Boling

MARK BOLING,
Defendant

Clearwater REI, LLC, et al. v. Boling, Case No. CV OC 1208669

CERTIFICATE OF SERVICE

I am a resident of Orange County, State of California, over the age of eighteen (18) years, and not a party to the above-entitled action.

I certify on June 25, 2012, I served the following document(s) in this action:

ANSWER TO COMPLAINT

by sending a true copy thereof by **ELECTRONIC SERVICE** pursuant to *I.R.C.P*, Rule 5 (b) (E) addressed to the party(s) served as follows:

Rebecca A. Rainey – rar@raineylawoffice.com

Attorney for Plaintiffs and Cross-Defendants Clearwater REI, LLC, Clearwater Real Estate Investments, LLC aka Clearwater Real Estate Investments, RE Capital Investments, LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak and Rob Ruebel.

The transmission of said document(s) to each party served was reported as complete and without error within a reasonable time after said transmission.

Dated: June 25, 2012

PATRICIA MOCELLA

RECEIVED
JUN 2 8 2012
Ada County Clerk

NO. _____ FILED
A.M. _____ P.M. 12
JUN 2 8 2012
CHRISTOPHER D. RICH, Clerk
By CHRISTINE SWEET
DEPUTY

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630
(949) 588-9222
(949) 588-7078 [fax]
maboling@earthlink.net
Defendant/Cross-Complainant, in pro per

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT

FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, et al.
Plaintiffs,

vs.

MARK BOLING,
Defendant,

MARK BOLING, an individual,
Cross-complainant,

vs.

CLEARWATER REI, LLC, an Idaho limited liability company, RE CAPITAL INVESTMENTS, LLC, a Delaware limited liability company, CLEARWATER REAL ESTATE INVESTMENTS, LLC, aka CLEARWATER REAL ESTATE INVESTMENTS, a Delaware limited liability company, BARTON COLE COCHRAN, an individual, CHAD JAMES HANSEN, an individual, RONALD D. MEYER, an individual, CHRISTOPHER J. BENAK, an individual, ROB RUEBEL, an individual, DOES 1-10,

Cross-Defendants.

Case No.: CV OC 1208669

COUNTERCLAIM AND THIRD PARTY COMPLAINT FOR VIOLATIONS OF THE I.C.P.A. AND BREACH OF GUARANTY

CATEGORY K(3) FILING FEE: $14

INTRODUCTION

1. This counterclaim and third party complaint is brought to obtain equitable relief, restitution, damages and/or other remedies, for violations by the Cross-Defendants of Idaho consumer protection statutes and breach of guaranty, in connection with Cross-Defendants' course of conduct arising out of Cross-Complainant's purchase and periodic payment of a 9 % Note.

2. A true and correct copy of any and all alleged exhibits are attached hereto and incorporated fully herein where referenced.

JURISDICTION AND VENUE

3. In this civil action, the amount in controversy exceeds the minimum jurisdictional requirements of this court.

4. As more fully alleged *infra*, at all relevant times several Cross-Defendants have their principal place of business, reside or were employed in this judicial district.

GENERAL ALLEGATIONS-CROSS-DEFENDANTS

5. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants Clearwater REI, LLC ("Manager") is an Idaho limited liability company, Clearwater Real Estate Investments, LLC, aka Clearwater Real Estate Investments ("Clearwater") is a Delaware limited liability company, RE Capital Investments, LLC ("Guarantor") is a Delaware limited liability company (collectively "Business Cross-Defendants").

6. Cross-Complainant is informed and believes and thereon alleges that the Business Cross-Defendants and Clearwater 2008 Note Program, LLC's ("Company") principal place of business is located at 1300 E. State Street, Eagle, ID 83616.

7. Cross-Complainant is informed and believes and thereon alleges that the Business Cross-Defendants and the Company compete primarily in the real estate investment industry.

8. Cross-Complainant is informed and believes and thereon alleges that Cross-Defendants Barton Cole Cochran is an individual residing in Idaho, Chad James Hansen is an individual residing in Idaho, Ronald D. Meyer is an individual residing in California, Christopher J. Benak is an individual residing in California and Rob Ruebel is an individual residing in Idaho (collectively "Individual Cross-Defendants")

9. Cross-Complainant is informed and believes and thereon alleges that the Individual Cross-Defendants are owners, officers and/or employees of the Business Cross-Defendants and/or the Company.

10. Doe Cross-Defendants 1 through 10, whose names are unknown, are sued herein by their fictitious names, as Cross-Complainant believes that such Doe Cross-Defendants are responsible, in whole or in part, for the incident and damage hereinafter alleged, and the Cross-Complainant will amend this counterclaim and third party complaint to properly identify such Cross-Defendants once their culpability and/or identities become known to Cross-Complainant.

11. Cross-Complainant is informed and believes and thereon alleges that

each named and/or Doe Cross-Defendant and/or the Company is responsible in some manner for the acts, occurrences and liability hereinafter alleged and referred to.

12. Cross-Complainant is informed and believes and thereon alleges that at all times mentioned herein, each named and/or Doe Cross-Defendant was the agent, servant or employee of each and every remaining Cross-Defendant and/or the Company, and the acts of each Cross-Defendant were within the course and scope of said agency and/or employment.

CROSS-COMPLAINANT

13. Cross-Complainant Mark Boling is a California resident who purchased a real estate investment promissory note in the sum of $50,000.00 for personal use after viewing and in reliance on the alleged material representations, acts and/or omissions of material facts as set forth herein.

14. Cross-Complainant has suffered an injury in fact and has lost money or property as a result of Cross-Defendants' business acts, omissions and practices as alleged herein based on his purchase of the real estate investment note.

FACTUAL ALLEGATIONS

A. Private Placement Memorandum, Supplements One and Two Thereto and Guaranty

15. On or about February 4, 2010, Cross-Complainant received an initial package from Rob Ruebel, Regional Vice-President of Sales of Clearwater consisting of A) a bound Confidential Private Placement Memorandum Book # 08Note-A238 dated

August 29, 2008 (Exh. 1), which included, inter alia, the Private Placement Memorandum (Exh. 1A ,"PPM"), a Guaranty (Exh. 2), and Supplements One and Two to the PPM (collectively, Exh. 3), and B) a cover letter dated February 1, 2010 and miscellaneous sheets about Clearwater Real Estate Investments (collectively, Exh. 4). Cross-Complainant did not receive a copy of the Note dated August 29, 2008, the Third Supplement to the PPM dated January 20, 2010, or the 2009 Year-End Update dated March 19, 2010 until after the submission and acceptance of his Subscription Agreement, *infra*.

16. The **PPM** sets forth the following:

> Clearwater 2008 Note Program, LLC, an Idaho limited liability company, was organized to offer up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015. The Company will use the proceeds from the offering of the Notes to provide secured financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, an Idaho limited liability company, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. * * * All loans made by the Company will be collateralized by a first position mortgage or deed of trust, as the case may be. [PPM, Introduction.]
>
> Noteholders may elect, from time to time, to (a) receive monthly distributions of simple interest at the annual rate

of 9.0%, or (b) re-invest accrued interest at a compounded annual interest rate of 9.0%. [PPM, Introduction.]

The mailing address of the Company is c/o Clearwater REI, LLC, 1300 E. State Street, Suite 103, Eagle, Idaho 83616. [PPM, Introduction.]

If, after carefully reading the entire Memorandum, obtaining any other information available and being fully satisfied with the results of pre-investment due diligence activities, a prospective Noteholder would like to purchase Notes, a prospective Noteholder should complete and sign the attached Subscription Agreement. The full purchase price for the Notes must be paid by check upon submission of the Subscription Agreement for the Notes. [PPM, p. 3.]

There are various conflicts of interest among the Company, the Manager and their Affiliates. [PPM, p. 5.]

COMPANY'S PRINCIPAL OFFICERS [PPM, p. 17.]:
The Investment Committee will include, but not be limited to the following principals:

- Ron Meyer, Chief Development Officer
- Chris Benak, Chief Development Officer
- Don Steeves, National Sales Director & Broker-Dealer Relations

• Bart Cochran, Vice President of Acquisitions & Operations
• Chad Hansen, Vice President of Finance. [PPM, p. 17.]

MANAGER'S KEY MANAGEMENT [PPM, p. 18.]:
• Ron Meyer, Chief Development Officer
• Chris Benak, Chief Development Officer
• Don Steeves, National Sales Director & Broker-Dealer Relations
• Bart Cochran, Vice President Of Acquisitions & Operations
• Chad Hansen, Vice President of Finance

Interest: Noteholders may elect to receive monthly interest payments in an amount equal to 9.0% simple interest on their principal investment. All distributions will paid in arrears on the fifteenth day of each month, beginning with the month following the month in which the Notes are issued. [PPM, p. 19.]
Interest Reinvestment Program (IRP): By giving written notice to the Company of their desire to do so not later than November 30, Noteholders may elect to have their interest reinvested and compounded monthly beginning on the first day of the year immediately following the date on which such notice was received by the Company. Reinvested interest will be compounded at the annual rate of 9.0%. Interest that is reinvested will be added to and

considered part of the principal amount of the Note at the end of each calendar month. [PPM, p. 19.]

Liquidity; Callability: Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company. [PPM, pp. 19-20.]

Guaranty: The Notes will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC [PPM, p. 20.] The Guaranty is attached to the PPM as Exhibit D.

Annual Report: Within 120 days after the end of each calendar year, the Company will send to each Noteholder of record during the previous year: (a) an audited balance sheet for the Company as of the end of such fiscal year and (b) an audited statement of the Company's earnings for such fiscal year, along with a year-end status report. [PPM, p. 24.]

Definitions:
"Company" means Clearwater 2008 Note Program, LLC, an Idaho limited liability company. [PPM, p. 25.]
"Manager" refers to Clearwater REI, LLC. The Manager is sole owner and the initial manager of the Company. [PPM, p. 26.]

"Noteholders" means purchasers of Notes. [PPM, p. 26.]
"Notes" means the $20,000,000 aggregate principal amount of 9.0% notes due December 31, 2015, subject to increase to $40,000,000 at the sole discretion of the Company, which will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC; however, the Notes will not be secured by collateral. [PPM, p. 26.]

"**Event of Default**" refers to the occurrence of any of the following: (a) failure to pay the principal on the Notes when due at maturity, or upon any earlier due date, or upon mandatory redemption at the option of Noteholder, (b) failure to pay any interest on the Notes for ten days after notice of such default to the Company; (c) failure to perform any other covenant for ten days after receipt of written notice specifying the default and requiring the Company to remedy such default; **or** (c) events of insolvency, receivership, conservatorship or reorganization of the Company. [PPM, p. 26.] (Emphasis added.)
Guarantor's Balance Sheet dated July 31, 2008 – attached Exhibit C to the PPM.

17. The **Guaranty** dated July 31, 2008 – attached as Exhibit D to the PPM, was signed on behalf of the Guarantor, RE Capital Investments, LLC, by its managing member, Diamond B Asset Management. The Guaranty states, inter alia:

"In order to induce each prospective purchaser (each a "Noteholder" and collectively the "Noteholders") of 9% Notes due on December 31, 2015 (each a "Note" and collectively the "Notes) issued by Clearwater 2008 Note Program, LLC (the "Company") to purchase the Notes, the Guarantor hereby unconditionally guarantees the payment of the original principal amount of the Notes as provided therein. This Guaranty shall remain in full force throughout the terms of the Notes."

"Guarantor hereby waives notice of acceptance of this Guaranty and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices to them of default by the Company under the Notes."

"The Guarantor's net worth will at all times during the term of the Guaranty be maintained at $54, 000.000 subject to increase in pro rata up to $78,000,000 if the Company increases the offering of the Notes."

"Guarantor further agrees, to the extent permitted by law, to pay any costs or expenses, including the reasonable fees of an attorney, incurred by the Noteholders in enforcing this Guaranty."

18. The **First Supplement to PPM** dated October 3, 2008 states, inter alia, that Peter Cooper, Senior Vice-President of Sales will assume the role of Director of

Sales and Broker Dealer Relations for Clearwater REI, LLC. Don Steeves, former National Sales Director and Director of Broker Relations, concluded his employment with Clearwater REI, LLC. [1st Suppl., p. 2.]

19. The four member Investment Committee now consists of current principal members of Clearwater REI, LLC, namely: Ron Meyer, Chris Benak, Bart Cochran and Chad Hansen. No loan will be made by the Company without the prior approval of the Investment Committee. [1st Suppl., p. 3.]

20. The **Second Supplement to PPM** dated June 30, 2009 states, inter alia, that the **RELATIONSHIP** of the Company (Clearwater 2008 Note Program, LLC), the Manager (Clearwater REI, LLC) and the Guarantor (RE Capital Investments, LLC) to each other, and their respective owners, is as follows [2nd Suppl., p.2]:

- RE Capital Investments, LLC owns 55.84% of Clearwater (Real Estate Investments).
  - Ronald D. Meyer owns 100% of Terron Investments, Inc., which owns 50 % of RE Capital Investments, LLC.
  - Christopher J. Benak owns 100% of Diamond B Asset Management, Inc., which owns the other 50% of RE Capital Investments, LLC.
- Barton Cole Cochran 100% of Leap, Inc. which owns 19.58% of Clearwater.
- Chad James Hansen owns 100% of Green Jackets Investments, Inc., which owns 19.58% of Clearwater.

Bart Cochran, who was formerly the Company's Vice-President of Acquisitions & Operations, is now the Company's President. Chad Hansen, who was formerly the Company's Vice-President of Finance, is now the Company's Chief Financial Officer. [2nd Suppl., p.2]

Guarantor's Balance Sheet dated December 31, 2008 – is attached as Exhibit A to the 2nd Suppl.

B. Subscription Agreement

19. Having viewed and in material reliance upon the contents of the initial package from Rob Ruebel, on February 12, 2010, Cross-Complainant executed and submitted a Subscription Agreement ("SA") (Exh. 5) to Clearwater, and Cross-Complainant paid the sum of $50,000 pursuant thereto as his personal investment in the Company's Note Program without having previously received a copy of the Note.

20. The **Subscription Agreement** states, inter alia, that the SA is the offer and agreement of the Cross-Complainant to purchase $50,000 in principal of 9% Notes to be issued by the Company subject to the terms, conditions, acknowledgments, representations and warranties stated herein and in the PPM, as supplemented from time to time. [SA, p.2.]

21. The Guarantor agreed to guarantee the repayment of principal under the Notes. [SA, p.3., ¶1]

22. Pertinent portions of the SA are as follows:

> "I acknowledge that I have received, read and fully understand the Memorandum. I acknowledge that I am

basing my decision to invest in Notes on the Memorandum and I have relied only on the information contained in said materials and have not relied upon any representations made by any other person." [SA, p.3., ¶2] (underline added)

"I am purchasing Notes for my own account and for investment purposes only." [SA, p.4, ¶7.]

"This Subscription Agreement shall be construed in accordance with and governed by the laws of the State of Idaho without regard to its choice of law provisions." [SA, p.4, ¶10.]

"[A]ny dispute, controversy or other claim arising under, out of or relating to this Agreement or any of the transactions contemplated hereby, or any amendment thereof, or the breach or interpretation hereof or thereof, shall be determined and settled in binding arbitration in Boise, Idaho, in accordance with applicable Idaho law, and with the rules and procedures of The American Arbitration Association. The prevailing party shall be entitled to an award of its reasonable costs and expenses, including, but not limited to, attorneys' fees, in addition to any other available remedies. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives, and judgment may be entered thereon in any court of competent

jurisdiction. BY EXECUTING THIS AGREEMENT, YOU ARE AGREEING TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE SUCH DISPUTES LITIGATED IN A COURT OR JURY TRIAL, AND YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE. BY EXECUTING THIS AGREEMENT, YOU HEREBY CONFIRM THAT YOUR AGREEMENTS TO THIS ARBITRATION PROVISION IS VOLUNTARY." [SA, p.4, ¶11.]

"[T]his Subscription Agreement and the Memorandum, together with all attachments and exhibits thereto, constitute the entire agreement among the parties hereto with respect to the sale of Notes and may be amended, modified or terminated only by a writing executed by all parties." [SA, p.4, ¶13.]

23. Interest Payments: The PPM is clear that interest payments at the rate of 9% are to be made on the fifteenth (15^{th}) of the month in arrears. Under the Subscription Agreement, Cross-Complainant acknowledged that he was basing his decision to invest in Notes on the Memorandum and he relied only on the information contained in said

materials and have not relied upon any representations made by any other person. [SA, p.3., ¶2]

C. Acceptance of Subscription Agreement, Certificate and Note

24. On or about March 6, 2010, Cross-Complainant received a cover letter dated March 1, 2010 (Exh. 6), an Acceptance of the Subscription Agreement (Exh. 5), a Certificate with an effective date of February 27, 2010 (Exh. 7), and a Note dated August 29, 2008 (Exh. 8) from Clearwater.

25. The terms of the agreement between Company/ Cross-Complainant arise out of 1) the executed Subscription Agreement, subject to the terms, conditions, acknowledgments, representations, and warranties stated therein and in the PPM, 2) Supplements One and Two to the PPM, and 3) those terms of the Note that are not inconsistent with the PPM and Supplements One and Two to the PPM. [SA, pp.2 & 4.]

26. The Acceptance of Subscription Agreement states, inter alia, that on February 26, 2010, Bart Cochran signed the acceptance of the SA, as the Manager for the Company.

27. The Certificate states, inter alia, the effective February 27, 2010, Certificate No 08-470 was signed by Bart Cochran as the Manager for the Company and issued to Cross-Complainant.

28. The Note states, inter alia, that a Note dated August 29, 2008, with the Company as the maker, was signed by Bart Cochran as the sole member for the Manager. No Exhibit A, listing the names of the Noteholders, including Cross-

Complainant, was attached or included with the Note that was delivered to Cross-Complainant.

29. Pertinent portions of the Note are as follows:

> FOR VALUABLE CONSIDERATION, the receipt, adequacy and sufficiency of which are hereby acknowledged, Clearwater 2008 Note Program, LLC, an Idaho limited liability company ("Maker"), promises to pay to the parties listed on Exhibit A attached hereto (the "Noteholders"), the aggregate principal amount of Twenty Million and 00/100 Dollars ($20,000,000) with the option to increase to Forty Million and 00/100 Dollars ($40,000,000), together with interest, late charges, costs and expenses, and all other amounts described below in accordance with the following terms and provisions:
>
> Section 1 Definitions.
> "Memorandum" shall mean Maker's Confidential Private Placement Memorandum dated August 18, 2008, as amended or supplemented from time to time, relating to the offer and sale by the Maker of up to $20,000,000 of Notes (subject to increase to $40,000,000).
>
> "Noteholder" shall mean any person or entity hereafter purchasing a Note in accordance with the Memorandum, subject to the provisions of the Transaction Documents applicable thereto, and any successor or assign thereof or entity acquiring an interest herein at any time.

"Transaction Documents" shall mean this Note, the Subscription Agreement and the Memorandum.

Section 2.1 Fixed Interest.
"Commencing on the date hereof and continuing until December 31, 2015, the outstanding principal hereunder shall bear interest at a fixed annual rate of 9%."

Section 3 Payments; Accrual.
"Commencing on the fifteenth day of the month next following the Funding Date and continuing on the fifteenth day of the month thereafter until the outstanding principal hereof is paid in full, Maker shall pay to, or accrue and compound for the benefit of, the Noteholders all unpaid Interest in an amount equal to the product of the principal amount hereunder and that fraction the numerator of which is the Noteholder's principal investment and the denominator of which is the principal amount hereunder. If not sooner paid, Maker shall pay the principal balance hereof in full on the Maturity Date, together with all unpaid accrued interest. Maker shall make all payments of Interest, late charges, and principal to the Noteholders at their respective addresses on file with the Maker as of the day which is ten days prior to the due date of such payment, on or before the date when due, without notice, deduction or offset. All payments shall be made in lawful money of the United States of America."

Section 5 Put Rights.

"Beginning December 31, 2010 and once annually thereafter, up to 10% of the original principal amount may be called by the Noteholders upon not less than 30 days written notice to the Maker."

Section 6 Late Charges.

" * * * Maker therefore agrees that a late charge equal to 5% of each payment of Interest or principal that is not paid within 10 days after its due date is a reasonable estimate of fair compensation for the loss or damages to the Noteholders will suffer. Further, Maker agrees that such amount shall be presumed to be the amount of damages sustained by Noteholders in such case, and such sum shall be added to amount then due and payable."

Section 8.1 Events of Default:

"Any of the following occurrences shall constitute an "Event of Default" under this Note: (a) failure by Maker to make any payment of Interest on or principal of this Note on or before the twenty-fifth (25^{th}) day of the month first becoming due in accordance with the terms of this Note, without any notice or demand for payment (a "Payment Default"); * * *."

Section 8.2 Remedies.

"Upon any Event of Default under this Note and the expiration of any applicable notice or cure periods: (a) the entire unpaid principal balance hereof, any accrued but unpaid Interest, late charges, and all other amounts owing under this Note, shall, at the option of the Noteholders, without further notice or demand of any kind to Maker or any other person, become immediately due and payable; and (b) Noteholders shall have and may exercise any and all rights and remedies available at law, by statute, or in equity.

The remedies of the Noteholders, as provided in this Note, shall be cumulative and concurrent and may be exercised singularly, successively, or together, at the sole discretion of the Noteholders, as often as occasion therefor shall arise. No act of omission or commission by the Noteholders, including specifically any failure to exercise any right, remedy or recourse, shall be deemed a waiver or release to be effected only through a written documents executed by the Noteholders. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of, any subsequent right, remedy, or recourse to collateral as to any subsequent event."

30. Principal Redemption: The PPM and Section 5 of the Note allows for an annual 10% redemption of principal commencing December 31, 2010 with 90 (previously 30) days written notice. This term is clear and unambiguous.

31. Since Cross-Complainant was not provided a copy of the Note prior to submission of the Subscription Agreement and payment, Cross-Defendants cannot argue that the Company's inconsistent right to accrue interest as compared with pay interest as set forth in Section 3 of the Note is applicable to Cross-Complainant. Moreover, the "accrue and compound" language of Section 3 of the Note is ambiguous and inconsistent with the PPM, because this language may reasonably be interpreted to apply to the Interest Reinvestment Program as expressed in the PPM.

32. Breach: Under the PPM an event of default occurs for a (a) failure to pay the principal on the Notes upon mandatory redemption at the option of Noteholder, without notice or cure period, and/or (b) failure to pay any interest on the Notes for ten days after notice of such default to the Company.

33. Under Section 8.1 (a) of the Note, a different event of default occurs when interest and redeemable principal payments are not paid on or before the 25th day of the month first becoming due, without notice or a cure period. Because Cross-Complainant never timely received the Note this inconsistent term would not apply.

D. Subsequent Communications to Cross-Complainant

34. On or about March 19, 2010 Cross-complainant received from Clearwater by mail a 2009 Year-End Update (Exh. 9) to keep the investors informed of the status of the Note Program. The 2009 Year-End Update letter states, "the assets of RE Capital, the guarantor, are being maintained at sufficient levels to allow us to meet our obligations." This 2009 Year-End Update revealed information regarding the

update and current strategy of the various loans made by Cross-Defendants prior to Cross-Complainant's investment. Two of the four loan projects were in default and/or in bankruptcy. The other two loan projects were having delays in the entitlement process.

35. On or about June 17, 2010, the Company disclosed its Independent Auditor's Report and Financial Statements for the calendar years 2008 and 2009 (Exh. 10).

36. On or about March 24, 2011, Cross-complainant received from Clearwater by mail a 2010 Year-End Update (Exh. 11) to keep the investors informed of the status of the Note Program. Now, all five (5) outstanding loans were in default.

37. On or about August 19, 2011, the Company disclosed its Independent Auditor's Report and Financial Statements for the calendar years 2009 and 2010 (Exh. 12).

38. The Company is solely owned by the Manager.

39. The Company maintained a separate allowance for each loan receivable. At December 31, 2010, the Company had an allowance for losses of $2,311,584.

40. In 2010, the Company suspended early redemption requests.

41. On November 4, 2011, Cross-Complainant received from Clearwater by mail a Notice to Note Holders dated October 26, 2011 (Exh. 13).

42. The Notice states, "Note Holders can be optimistic of the collateral position of the Note Program today." The Notice further states that the amount of the

interest payment distribution would be reduced for the months of November 2011, December 2011 and January 2012 and reassessed for February 2012.

43. On November 6, 2011, Cross-Complainant sent Clearwater written notice to redeem 10% of his principal amount under the Transaction Documents and requested a current Balance Sheet of the Guarantor (Exh. 14 – Email String/Letters).

44. As of November 6, 2011, the last Balance Sheet of the Guarantor disclosed to the Cross-Complainant was dated December 31, 2008.

45. On November 10, 2011, Clearwater acknowledged receipt of Cross-Complainant's liquidation request, placed Cross-Complainant's request on a *priority list* with an acceptance date of November 7, 2011 and informed Cross-Complainant that all liquidation requests have been suspended (Exh. 14 – Email String/Letters), , thus creating an anticipatory breach of Cross-Complainant's right to redeem 10% of the unpaid principal amount. Clearwater stated that it "has made multiple attempts to get updated financials from RE Capital (Guarantor) and we have received word that we should have updated financials no later than year end 2011."

46. No contractual authority existed for Cross-Defendants' bad faith position to suspend the Cross-Complainant's mandatory right to principal redemption.

47. On December 1, 2011, Cross-Complainant *first* became aware of, obtained by email and reviewed a copy of the Third Supplement to the PPM dated January 20, 2010 (Exh. 15) from Ross Farris, Director Marketing and Investor Relations

for Clearwater in response to Cross-Complainant's previous inquiries into the Clearwater 2008 Note Program.

48. Any terms of the Note and/or Third Supplement to the PPM that are inconsistent with PPM and Supplements One and Two are inapplicable and unenforceable against Cross-Complainant because a copy of the Note and/or Third Supplement to the PPM were never timely provided to Cross-Complainant prior to submission by the Cross-Complainant and acceptance by the Company of the Subscription Agreement, and therefore such inconsistent terms cannot be considered as part of the Company/Cross-Complainant agreement.

49. The **Third Supplement to the PPM** states, inter alia, "[a]lthough the Guarantor's net worth of approximately, $53.4 million is lower than the net worth of $54 million it has covenanted to maintain under the Guaranty based on a Maximum Offering Amount of $20,000,000, in the event that the increased Maximum Amount of $21,900,000 is attained, the Guarantor's net worth does provide a principal coverage ratio of: (a) 1.2x, if a portion of the Guarantor's net worth is reserved to provide 1.5x coverage over principal amounts outstanding under the notes issued by Clearwater 2007 Notes Program, LLC (the "2007 Notes Program") (accounting for liquidation of $2,000,000 in principal amounts of the notes issued by the 2007 Notes Program as of December 31, 2009, with $18,000,000 remaining outstanding), and (b) 2.44x, if this reserve is not made (the Guarantor is not required to make this reserve). Attached as

Exhibit A to the Third Supplement to the PPM was the Guarantor's Balance Sheet dated December 31, 2009.

50. On or about December 14, 2011, Cross-Complainant received a letter by mail from the Company on Clearwater letterhead confirming that 1) the security for the loans were not cross-collateralized, 2) the Manager decides exclusively when to get appraisals for the Projects, 3) the 2010 Audited Report and financials of the Company were purportedly first available on May 1, 2011, 4) the initial PPM packet included the Third Supplement to the PPM, the Company has requested a final 2010 Balance Sheet from the Guarantor, and 5) the Company "cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders." (Exh. 14 – Email String/Letters)

51. On December 20, 2011, Cross-Complainant spoke by telephone with Lori Fischer, Controller of Clearwater, who informed Cross-Complainant that the 2010 Audited Report and financials of the Company were first available on or after August 29, 2011.

52. On December 20, 2011, Cross-Complainant stated in an email to Clearwater: "If the Company maintains now and at the time of the initial PPM that it can alter or over-ride this expressed term regarding Callability on the basis that it has an obligation to ALL Note holders allowing the Company not to abide by this expressed term, then I would request that my subscription be immediately rescinded and the total principal amount of my note be restored." (Exh. 14 – Email String/Letters)

53. On or about January 12, 2012, Cross-Complainant received a form letter by mail from Clearwater as a Note Holder postponing all 2011 liquidation requests until further notice. (Exh. 16)

54. On or about January 25, 2012, Cross-Complainant received a letter by mail from Company on Clearwater letterhead stating that it has "been in contact with RE Capital and are hopeful of receiving correspondence from them in the next 30 days. (Exh. 14 – Email String/Letters)

55. On February 2, 2012, Ross Farris, Director of Marketing and Investor Relations of Clearwater informed Cross-Complainant by telephone that the reduction of interest payments was made pursuant to Section 3 of the Note and the suspension of liquidation rights was made in 2010 to protect all Noteholders. Cross-Complainant informed Mr. Farris that he never received a copy of the Note until after submitting his Subscription Agreement and $50,000 payment to the Company. Cross-Complainant further requested a copy of Exhibit A to the Note. Mr. Farris responded that he would obtain a copy of Exhibit A to the Note, but only with Cross-Complainant's name on it and not the identity of all Noteholders. No Exhibit A to the Note was ever received by Cross-Complainant.

56. On February 2, 2012, Cross-Complainant sent to Clearwater by email, regarding the Clearwater 2008 Note Program, a written Notice of Default on Interest payments for November 2011, December 2011, and January 2011, and a written Notice

of Default on his liquidation rights and demanding that payment be made immediately or after a cure period, if necessary. (Exh. 14 – Email String/Letters)

57. The Company breached the applicable Transaction Documents by not timely paying full interest to Cross-Complainant for the months of November 2011, December 2011, and January 2012 after any necessary cure period.

58. On February 6, 2012, Cross-Complainant received by mail from Clearwater a cover letter and January Update dated January 31, 2012. (Exh. 17) The cover letter states: "the February payment will be 25% of the monthly interest distributed." The Update acknowledges: "Real Estate values have fallen dramatically nationwide."

59. Cross-Complainant can assert that the Company made an anticipatory breach on November 10, 2011 by giving notice of its suspending the Noteholders' right to principal redemption. Regardless, on February 6, 2012 the Company breached the applicable Transaction Documents by its failure to timely pay to Cross-Complainant the redeemable principal that was due and owing after the 90-day waiting period.

60. On February 9, 2012, Cross-Complainant received from Clearwater a Quarterly Statement ending December 31, 2011 (Exh 18) that sets forth the "Total Outstanding Principal of Master Promissory Note to Investors" as $21,810,000 and "Total Appraised Value of Collateral" as $25,100,000 and "Collateral valuations dated September 15, 2010, January 19, 2011 and September 21, 2011."

61. On February 15, 2012 and out of abundance of caution, Plaintiff filed a Demand for Commercial Arbitration with the American Arbitration Association ("AAA") against all named Cross-Defendants and the Company and served said parties therewith regarding the acts and omissions set forth herein under the arbitration clause in the SA.

62. On or about March 8, 2012, Cross- Defendants filed with the AAA and served their Answer Statement objecting to arbitrate the disputes set forth in the counterclaim and third party complaint on behalf of all named Cross-Defendants, but not the Company.

63. Cross-complainant has and continues to incur costs in proceeding with the forced arbitration against the Company under the arbitration clause of the SA.

64. If Cross-Complainant was timely made aware of the aforementioned facts, Cross-Complainant would not have made his $50,000 investment in the Clearwater 2008 Note Program.

65. The representations and/or material omissions of fact are presented in a manner that is likely to mislead a reasonable consumer, the consuming public, including Cross-Complainant, and serves no legitimate purpose.

66. These acts, omissions, and/or representations were made for the purpose of inducing consumers, including Cross-Complainant, to purchase real estate investment notes with Cross-Defendants or the Company and not Cross-Defendants or the Company's competitors.

CLASS ACTION ALLEGATIONS AND CLAIMS RESERVED

67. In addition to Cross-Complainant's individual claims, Cross-Complainant reserves the right, after appropriate discovery, to amend this pleading to add class allegations, class claims, subclass claims, and/or seek certification of a class and/or any appropriate subclass under *I.R.C.P*, Rule 23.

FIRST CLAIM FOR RELIEF

VIOLATION OF THE IDAHO CONSUMER PROTECTION ACT [I.C. § 48-603 (12) (13) (17)]

(Cross-Complainant against All Named Cross-Defendants and Does 1-10)

68. Cross-Complainant repleads and incorporates fully herein by this reference, each and every allegation contained in the preceding paragraphs of this pleading.

69. Cross-Defendants violated I.C. § 48-603 (17) based on their initial failure to timely provide Cross-Complainant with the information contained in the Note, the Third Supplement to the PPM, and the 2009 Year-End Update with enclosures.

70. On or about February 1, 2010, the initial package including the PPM came from the offices of Clearwater, who had a duty to include the information contained in the Note, the Third Supplement to the PPM, and the 2009 Year-End Update to allow Cross-Complainant to fully review and assess the status of the investment in a timely manner before Cross-Complainant's submitting the executed Subscription Agreement.

71. The information contained in the Note, the Third Supplement to the PPM, and the 2009 Year-End Update were material to Cross-Complainant's investment decision because 1) the Note sets forth purportedly different terms in the payment of interest in the Program, 2) the Third Supplement to the PPM sets forth a change in the principal redemption term and a more recent and substantially reduced financial condition of the Guarantor, and 3) the 2009 Year-End Update discloses on-going information of the Note Program's failing loan portfolio that existed as of December 31, 2009, to-wit, two of the four loan projects were in default and/or in bankruptcy and the other two loan projects were having delays in the entitlement process, which would greatly affect the collateral's value.

72. If before investing, Cross-Complainant had been made aware of 1) the Note's contents that the purported accrual of interest payments, as compared with the actual payment of interest as expressed in the PPM, was to apply to his transaction with the Company, 2) the contents of the Third Supplement to the PPM that a) further restrictions were place on the Noteholder's right to redeem principal, and b) the Guarantor's net worth on December 31, 2009 was less than the covenanted amount set forth in the Guaranty, 3) the Guarantor's cash reserves was depleted before Cross-Complainant received the PPM, and/or 4) the Program's unstable loan portfolio as described in the 2009 Year-End Update, Cross-Complainant would not have entered into the Subscription Agreement and invested in the purchase of the Note.

73. Cross-Defendants violated I. C. § 48-603 (17) during the course of the Note Program because the Cross-Defendants failed to timely and conspicuously disclose material facts as to the deteriorating financial condition of the Note Program's loan portfolio, the inability or refusal of the Company to pay interest or redeemable principal, and the Guarantor's unsatisfactory net worth and cash position.

74. The Cross-Defendants knew, or should have known with their superior knowledge, that 1) they would not timely provide a 2010 audited balance sheet for the Company, 2) they would not timely pay all accrued interest to the Noteholders, 3) they would refuse to allow the Noteholders who opted, including Cross-Complainant, to partially redeem principal, 4) they would not seek payment of the redeemable principal amounts from the Guarantor, who had no sizable cash flow, and 5) the Guarantor's net worth was insufficient under the conditions of the Guaranty and continuing to deteriorate. Each of these facts, if timely disclosed to Cross-Complainant, would have allowed Cross-Complainant and other Noteholders to exercise his/her right to the 10% principal redemption substantially earlier in the investment period. Thus, Cross-Defendants' willful blindness and repeated and flagrant failure to timely disclose these facts reduced the value of the Noteholders' investment including Cross-Complainant.

75. Cross-Defendants violated I.C. §48-603 (17) based on their failure to timely provide the 2010 audited reports and financials for the Company and Guarantor's Balance Sheet for 2010 and 2011.

76. The 2010 audited reports and financials for the Company were due to be given to the Noteholders by May 1, 2011, but were not disclosed on Clearwater's website until on or after August 19, 2011. This audited report first disclosed the suspension of principal redemption rights that occurred in 2010, the default or foreclosure status of all 5 existing projects, and the significant Net Loss of the Company.

77. With real estate values falling dramatically nationwide, the lower net worth and reduced cash flow as seen in the Guarantor's 12/31/09 Balance Sheet, the Company and/or Manager's failed to get any current Balance Sheet between 1/1/10 to the present from the Guarantor, which would disclose and trigger a further breach of the Guarantor's net worth.

78. It is evident that the officers of the Company did not want to financially harm themselves because of their full ownership of RE Capital Investments, LLC (Guarantor), which is split 50/50 between Ron Meyer and Chris Benak's wholly-owned LLCs, who are key management for the Company and the Manager.

79. The Cross-Defendants have acted unfairly by not 1) seeking a timely Balance Sheet from the Guarantor for 2010 and 2011, 2) enforcing the net worth status of the Guarantor and/or 3) seeking any payment of the opted redemption principal payments on behalf of the Noteholders.

80. Cross-Defendants violated I.C. § 48-603 (17) because the 10/26/11 Notice to Note Holders (Exh. 13) had a tendency to mislead or deceive the Noteholders, including Cross-Complainant.

81. The 10/26/11 Notice to Note Holders sent by Clearwater and signed by the Company attempted to conceal their financial subterfuge by misleading the Noteholders as to the relative value of the collateralization in comparison to the Company's outstanding loans.

82. The Notice sets forth in regular font individual valuations for each project relative to the loan amount and then sets forth in **bold** font the totals these valuations and loan amounts to lead the Noteholder to believe that the loans are adequately secured under the totality of the circumstances.

83. In fact, the Company has admitted in its 12/14/11 Letter to Cross-Complainant (Exh. 14) that no cross-collateralization agreements exist between each project loan.

84. Thus, the Note Program was not fully secured. For example, the Coastal Gables – Vertical Loan is $2,063,977 with collateral valued at $345,600. The Coastal Gables – Vertical Loan reflects a loss of value to the Noteholder because the loan is significantly under-secured by $1,718,377, which causes the overall Program to be under-secured by more than 12%.

85. Thus, the **BOLD** comparison of total amounts in the Notice is misleading or has a tendency to mislead the Noteholders, including Cross-Complainant,

as to the financial strength of the Program and ability to meet its financial obligations to the Noteholders.

86. Additionally, the Notice states: "Note Holders can be optimistic of the collateral position of the Note Program today. As shown in the following table, because of conservative underwriting, the loans made by the Note Program continue to be secured by the following collateral."

87. These surreptitious statements in the Notice have a tendency to mislead or deceive the Noteholders, including Cross-Complainant, in violation of I.C. § 48-603(17) by failing to disclose a current valuation of the Healthcare of Florence project. The date of valuation for the Healthcare of Florence project was 1/19/11, as compared with recent valuation between 9/15-21/11for the other three projects. As the Healthcare of Florence project is the biggest investment by the Company, and with failing valuations in the general real estate market during 2011, the lack of a current valuation on the Healthcare of Florence project is likely mislead or deceive the Noteholders as to the overall collateral position of the Note Program and the Company's ability to pay interest and allow the Noteholders to redeem 10% principal annually.

88. Cross-Defendants violated I. C. § 48-603 (12) and/or (13) based on their failure to provide Cross-Complainant with a copy of the Note at the time of providing the PPM and/or Cross-Complainant submitting the executed Subscription Agreement because the Note, which was the subject matter of the entire agreement, contained different terms regarding the payment or accrual of interest than stated in the PPM.

89. Cross-Defendants violated I. C. § 48-603 (13) based on their failure and refusal to provide Cross-Complainant with Exhibit A to the Note, which was to list of all existing Noteholders, including Cross-Complainant, at the time of providing the Note or at anytime.

90. Cross-Complainant was not given the entire agreement that provides him with the expressed ownership rights in the Note. Cross-Defendants' failure and refusal to provide the identity of all existing Noteholders in Exhibit A to the Note is also a violation of I.C. § 48-603 (17) and inconsistent with the plural tense language of the Note regarding "promise to pay the parties listed on Exhibit A attached hereto (the "Noteholders").

91. Cross-Complainant has incurred an ascertainable loss as a result of Cross-Defendants' acts, as set forth in the ICPA Violations section, *supra*, and in reliance on the affirmative statements made by the Cross-Defendants that the a) annual an audited balance sheet for the Company would be timely disclosed, b) interest at the annual rate of 9% of the unpaid principal balance would be timely paid each month, c) 10% principal could be timely redeemed by the Noteholders annually after December 31, 2010, d) the Guarantor would be obligated to repay principal, and e) net worth of the Guarantor would be maintained at least $54 Million during the Note period.

92. By being duped into purchasing the Note based upon Cross-Defendants' disclosures and omissions of material facts, Cross-Complainant is damaged by 1) the loss of his purchase money, 2) the loss of use of his purchase money, 3) the loss of his

buying power, 4) an inadequate and/or diminution in value of that investment at the time of the actionable conduct, and/or 5) full and timely payments of interest and redemption principal.

93. As a proximate result of the above-described representations, acts and/or omissions by Cross-Defendants, Cross-Complainant has sustained an injury in fact and suffered damages by purchasing the Note as a result of viewing and in reliance upon Cross-Defendants' disclosures and/or material omissions of fact as alleged herein.

94. Cross-Complainant's loss consists 1) of his initial $50,000 principal amount in the purchase of the Company's Note Program, 2) of the use of his initial principal amount, 3) in not receiving full interest payments from the Company for November 2011, December 2011, January 2012, and thereafter, 4) in not receiving $5,000 as 10% of his redeemable principal amount on February 6, 2012, and/or 5) arbitration costs.

95. Cross-Defendants knew, or should have known, that a potential investor, including Cross-Complainant, regards or is likely to regard 1) all terms of the Note that is being purchased in conjunction with the PPM, and 2) the financial conditions of the Company, the Loan Portfolio and the Guarantor as important factors in determining a potential investor's choice of action and resulting investment in the purchase of the Note. The material aspect of these factors can be established from the circumstances wherein Cross-Defendants include similar facts in the PPM, the Supplements thereto, the Annual Updates and Notices provided to the Noteholders.

96. There are various conflicts of interest among the Company, the Manager and their Affiliates. [PPM, p. 5.] It is these conflicts as set forth in the PPM and the supplements thereto, *supra*, which includes co-mingling officers and business entities, that establishes joint and several liability against all named Cross-Defendants as agents for and in control of the Company for the ICPA violations herein. The incestuous operation of the individual corporate officers and their web of interlocking business entities under the umbrella of the "Clearwater" name create an oneness of activity with respect to each significant business decision made for the Note Program and to the detriment of the Cross-Complainant.

97. Liability against the Individual Cross-Defendants exists as "persons" under I.C. § 48-602 (1) based on their active participation in the actionable conduct as set forth in the ICPA violations, *supra*, and based on their principal ownership and management of the operations of the Company, the Manager, and/or Clearwater, which are the business entities that were the conduit of the unlawful acts, and therefore warrants equitable or statutory relief.

98. Liability against the Business Cross-Defendants exists based on the acts of their agents, employees or officers in perpetrating the ICPA violations, *supra.*

99. Under the private-right-of-action provision of the ICPA [I.C. § 48-608 (1)], Cross-Complainant may treat any agreement incident thereto as voidable or, in the alternative, may bring an action to recover actual damages or one thousand dollars ($1,000), whichever is the greater. Any such person may also seek restitution, an order

enjoining the use or employment of methods, acts or practices declared unlawful under this chapter and any other appropriate relief which the court in its discretion may deem just and necessary. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper in cases of repeated or flagrant violations.

100. Cross-Defendants have repeatedly or flagrantly misrepresented and/or omitted a material fact known to the Cross-Defendants with the intention on the part of the Cross-Defendants of thereby depriving its customers of property or legal rights or otherwise causing and/or intending to cause injury to its customers as alleged herein, and Cross-Complainant is therefore entitled to punitive damages in an amount to be determined at time of trial.

101. To the extent that any Cross-Defendant claims ignorance of the law or the alleged violations of law contained herein, such ignorance is terminated as of the date this lawsuit and/or pleading is served on such party, if not sooner.

102. Each and every violation committed after the date this lawsuit and/or pleading is served, shall be deemed to be an INTENTIONAL violation of Idaho law the laws of all other jurisdictions with the same or similar consumer protection laws, if not sooner.

103. Prejudgment interest to fully compensate Cross-Complainant for money lent under Cross-Defendants' deceptive practices is available at the contract rate of 9% per annum OR the rate of 12% per annum in those cases where damages are "liquidated

or ascertainable by mere mathematical process." See I.C. § 28-22-104; *Ervin Const. Co vs. Van Orden* (1993) 125 Idaho 695, 704. In this case, Cross-Complainant's damages are liquidated at $50,000.00.

SECOND CLAIM FOR RELIEF

BREACH OF GUARANTY

(Cross-Complainant against Defendant RE Capital Investments, LLC and Does 6 – 10)

104. Cross-Complainant repleads and incorporates fully herein by this reference each and every allegation contained in each and every preceding paragraph of this pleading.

105. The terms of the Guaranty between the Guarantor and Cross-Complainant (Exh. 2) are also set forth as Exhibit D to the PPM.

106. The Guarantor's obligations to the Cross-Complainant, as a third party beneficiary, arise out of and are referenced in the executed Subscription Agreement, subject to the terms, conditions, acknowledgments, representations, and warranties stated therein and in the PPM, Supplements One and Two to the PPM, and the Note, which reference the Guaranty's applicability to the Noteholders' investments.

107. The Guaranty unconditionally guarantees the payment of the original principal amount of the Notes as provided therein. "Guarantor hereby waives notice of acceptance of this Guaranty and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices to them of default by the Company under the Notes." "The Guarantor's net

worth will at all times during the term of the Guaranty be maintained at $54, 000.000 subject to increase in pro rata up to $78,000,000 if the Company increases the offering of the Notes."

108. Since the Company failed to timely pay redeemable principal to Cross-Complainant, the entire unpaid principal balance of $50,000 is due and owing under the Remedies section of the Note. The Guarantor is currently liable for this indebtedness.

109. Guarantor also breached the Guaranty by its failure to maintain a net worth of $54,000,000 as seen in the Guarantor's 12/31/09 Balance Sheet, which was disclosed in the Third Supplement to the PPM.

110. Since Cross-Complainant did not timely receive a copy of the Third Supplement to the PPM until December 1, 2011, Cross-Complainant was unable to identify his claim and seek relief for this breach earlier.

PRAYER FOR RELIEF

Wherefore, Cross-Complainant prays as follows:

FIRST CLAIM

1) For a preliminary and/or permanent injunction, pursuant to *I.C.* §48-608 (1), enjoining Cross-Defendants and its agents, servants, employees and anyone acting on their behalf from committing further violations of the ICPA as described in this complaint in Idaho and throughout the United States;
2) That Cross-Complainant's $50,000 investment in the Clearwater 2008 Note Program be voided;
3) Principal purchase money paid in the amount of $50,000;

4) Accrued by unpaid interest to date at the annual rate up to 12%;

5) Late charges equal to 5% of each unpaid monthly interest payment;

6) Late charges equal to 5% of the principal redemption payment amount of $5,000;

7) Arbitration costs in an amount to be determined at time of trial;

8) Statutory damages, pursuant to *I.C.* §48-608 (1), of $1,000 for each ICPA violation;

9) Punitive damages, pursuant to *I.C.* §48-608 (1), in an amount to be determined at time of trial;

10) Attorney fees, if any, pursuant to I.C. §48-608 (5) and allowable costs; and

11) Such other and further relief as the court deems just and proper.

SECOND CLAIM

1) Principal purchase money paid in the amount of $50,000;

2) Accrued by unpaid interest to date at the annual rate up to 12%;

3) Late charges equal to 5% of each unpaid monthly interest payment;

4) Late charges equal to 5% of the principal redemption payment amount of $5,000;

5) Allowable costs; and

6) Such other and further relief as the court deems just and proper.

Dated: June 25, 2012

Mark Boling

MARK BOLING,
Cross-Complainant

EXHIBITS 1- 3

SEE BOOKMARKS

CLEARWATER
REAL ESTATE INVESTMENTS

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

CLEARWATER 2008 NOTE PROGRAM, LLC
$20,000,000 9.0% Notes
(Subject to increase to $40,000,000)

Minimum Investment: $50,000
Minimum Offering Amount: $1,000,000
Maximum Offering Amount: $20,000,000 (Subject to increase to $40,000,000)

Clearwater 2008 Note Program, LLC, an Idaho limited liability company, was organized to offer up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015, subject to increase to $40,000,000 at the sole discretion of the Company. The Company will use the proceeds from the offering of the Notes to provide secured financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, an Idaho limited liability company, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. Such projects may include, without limitation, acquisition, entitlement, and development of and construction on undeveloped real property and purchase or refinance of existing real estate assets. See "Business Plan." All loans made by the Company will be collateralized by a first position mortgage or deed of trust, as the case may be. The Company expects that most, if not all, loans will be made to its Affiliates for projects located in Idaho, Nevada, Arizona and California, although the Company reserves the right, at its sole discretion, to make loans in other areas. Each collateralized loan made by the Company will be described in a supplement to this Memorandum.

The Notes will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC. See "Description of Notes", "Clearwater REI, LLC" and the Guaranty attached hereto as Exhibit D. All Notes issued pursuant to this Memorandum will mature on December 31, 2015. Notes will be issued and will begin accruing interest on the first day immediately following the day on which the investment proceeds therefrom are received by the Company. Noteholders may elect, from time to time, to (a) receive monthly distributions of simple interest at the annual rate of 9.0%, or (b) re-invest accrued interest at a compounded annual interest rate of 9.0% (such reinvested interest will be added to and considered principal from and after re-investment). See "Description of the Notes – Interest Reinvestment Plan." Beginning December 31, 2011, the Company, at is sole discretion, may call all or any portion of the Notes, at any time, for 100% of the original principal amount of such Notes, plus accrued but unpaid interest, upon 90 days written notice to the Noteholders, without penalty. Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company. See "Description of the Notes." Capitalized terms not otherwise defined herein have the meanings given to them in the Glossary.

The Notes are being issued with a minimum investment of $50,000 and in additional denominations of $1,000; however, smaller purchases are available at the sole discretion of the Company.

	Price to Investors	Selling Commissions and Expenses[1]	Proceeds to the Company[2]
Minimum Investment[3]	$50,000	$ 4,650	$45,350
Maximum Offering Amount[4]	$20,000,000	$1,860,000	$18,140,000

(1) Notes will be offered and sold on a "best efforts" basis by broker-dealers who are members of FINRA. The members of the Selling Group will receive selling commissions of up to 7.0% of the Gross Proceeds. The amount of Selling Commissions may be reduced, however, if a lower commission rate is negotiated with a member of the Selling Group. The Managing Broker-Dealer will receive up to 2.3% of the Gross Proceeds as compensation and reimbursement for due diligence and marketing expenses up to 1.0% of which may be re-allowed to members of the Selling Group for marketing and due diligence expenses. The aggregate amount of Selling Commissions and Expense Reimbursements paid to members of the Selling Group will not exceed 9.3% of the Gross Proceeds. See "Use of Proceeds" Affiliates of the Company may receive Selling Commissions in connection with the sale of Notes. See "Conflicts of Interest." The Company, in its discretion, may accept purchases of Notes net of all or an agreed portion of the Selling Commissions from subscribers purchasing through a registered investment advisor, from subscribers for Notes who are affiliates of the Company or a member of the Selling Group.
(2) Amounts shown are proceeds after deducting selling commissions and allowance, but before deducting organizational and offering expenses and other expenses incurred in connection with the Offering and the Company's operations.
(3) The minimum purchase is $50,000 principal amount of Notes. The Company has the right, at its sole discretion, to waive the minimum purchase requirement.
(4) Subject to increase to $40,000,000 at the sole discretion of the Company. If the offering is increased to $40,000,000 the Selling Commission and Expenses in the table will be $3,720,000 and Proceeds to the Company will be $36,280,000.

This Memorandum is dated August 29, 2008

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

CLEARWATER 2008 NOTE PROGRAM, LLC
$20,000,000 9.0% Notes
(Subject to increase to $40,000,000)

Minimum Investment: $50,000
Minimum Offering Amount: $1,000,000
Maximum Offering Amount: $20,000,000 (Subject to increase to $40,000,000)

Clearwater 2008 Note Program, LLC, an Idaho limited liability company, was organized to offer up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015, subject to increase to $40,000,000 at the sole discretion of the Company. The Company will use the proceeds from the offering of the Notes to provide secured financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, an Idaho limited liability company, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. Such projects may include, without limitation, acquisition, entitlement, and development of and construction on undeveloped real property and purchase or refinance of existing real estate assets. See "Business Plan." All loans made by the Company will be collateralized by a first position mortgage or deed of trust, as the case may be. The Company expects that most, if not all, loans will be made to its Affiliates for projects located in Idaho, Nevada, Arizona and California, although the Company reserves the right, at its sole discretion, to make loans in other areas. Each collateralized loan made by the Company will be described in a supplement to this Memorandum.

The Notes will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC. See "Description of Notes", "Clearwater REI, LLC" and the Guaranty attached hereto as Exhibit D. All Notes issued pursuant to this Memorandum will mature on December 31, 2015. Notes will be issued and will begin accruing interest on the first day immediately following the day on which the investment proceeds therefrom are received by the Company. Noteholders may elect, from time to time, to (a) receive monthly distributions of simple interest at the annual rate of 9.0%, or (b) re-invest accrued interest at a compounded annual interest rate of 9.0% (such reinvested interest will be added to and considered principal from and after re-investment). See "Description of the Notes – Interest Reinvestment Plan." Beginning December 31, 2011, the Company, at is sole discretion, may call all or any portion of the Notes, at any time, for 100% of the original principal amount of such Notes, plus accrued but unpaid interest, upon 90 days written notice to the Noteholders, without penalty. Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company. See "Description of the Notes." Capitalized terms not otherwise defined herein have the meanings given to them in the Glossary.

The Notes are being issued with a minimum investment of $50,000 and in additional denominations of $1,000; however, smaller purchases are available at the sole discretion of the Company.

	Price to Investors	Selling Commissions and Expenses[1]	Proceeds to the Company[2]
Minimum Investment[3]	$50,000	$ 4,650	$45,350
Maximum Offering Amount[4]	$20,000,000	$1,860,000	$18,140,000

(1) Notes will be offered and sold on a "best efforts" basis by broker-dealers who are members of FINRA. The members of the Selling Group will receive selling commissions of up to 7.0% of the Gross Proceeds. The amount of Selling Commissions may be reduced, however, if a lower commission rate is negotiated with a member of the Selling Group. The Managing Broker-Dealer will receive up to 2.3% of the Gross Proceeds as compensation and reimbursement for due diligence and marketing expenses up to 1.0% of which may be re-allowed to members of the Selling Group for marketing and due diligence expenses. The aggregate amount of Selling Commissions and Expense Reimbursements paid to members of the Selling Group will not exceed 9.3% of the Gross Proceeds. See "Use of Proceeds" Affiliates of the Company may receive Selling Commissions in connection with the sale of Notes. See "Conflicts of Interest." The Company, in its discretion, may accept purchases of Notes net of all or an agreed portion of the Selling Commissions from subscribers purchasing through a registered investment advisor, from subscribers for Notes who are affiliates of the Company or a member of the Selling Group.

(2) Amounts shown are proceeds after deducting selling commissions and allowance, but before deducting organizational and offering expenses and other expenses incurred in connection with the Offering and the Company's operations.

(3) The minimum purchase is $50,000 principal amount of Notes. The Company has the right, at its sole discretion, to waive the minimum purchase requirement.

(4) Subject to increase to $40,000,000 at the sole discretion of the Company. If the offering is increased to $40,000,000 the Selling Commission and Expenses in the table will be $3,720,000 and Proceeds to the Company will be $36,280,000.

This Memorandum is dated August 29, 2008

An investment in Notes is hig... ...peculative and involves substantial risks. Risk Factors" beginning on page 9 for a complete discussion of the risks, including, but not limited to, the following:

- there is no certainty as to an investment in Notes being profitable;
- underlying risks inherent to the individual real estate projects for which the proceeds are used, including the risks associated with residential and commercial development;
- risks of national, regional, and local economic downturn;
- the Notes are not a diversified investment; and
- there are various conflicts of interest among the Company, the Manager and their Affiliates.

The mailing address of the Company is c/o Clearwater REI, LLC, 1300 E. State Street, Suite 103, Eagle, Idaho 83616, Attention: Don Steeves. The telephone number of the Company is (208) 639-4488.

The Notes offered hereby have not been registered under the Securities Act or the securities laws of certain states and are being offered and sold in reliance on exemptions from the registration requirements of the Securities Act and such laws. The Notes are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and such laws pursuant to registration or exemption therefrom. In making an investment decision, investors must rely on their own examination of the person or entity creating the securities and the terms of the offering, including the merits and risks involved.

The Securities Act and the securities laws of certain jurisdictions grant purchasers of securities sold in violation of the registration or qualification provisions of such laws the right to rescind their purchase of such securities and to receive back the consideration paid. The Company believes that the Offering of Notes described in this Memorandum is not required to be registered or qualified. Many of these laws granting the right of rescission also provide that suits for such violations must be brought within a specified time, usually one year from discovery of facts constituting such violation and three years from the violation. Should any investor institute such an action on the theory that the Offering conducted as described herein was required to be registered or qualified, the Company contends that the contents of this Memorandum constituted notice of the facts constituting such violation.

No person has been authorized to give any information or make any representations other than those contained in this Memorandum, and, if given or made, such information or representations must not be relied upon as having been given by the offerors. This Memorandum does not constitute an offer or solicitation by anyone in any jurisdiction in which such an offer or solicitation is not authorized, or in which the person making such an offer is not qualified to do so, or to any person to whom it is unlawful to make an offer or solicitation.

Neither the information contained herein, nor any prior, contemporaneous or subsequent communication should be construed by the prospective investor as legal or tax advice. Each prospective investor should consult his own legal, tax and financial advisors to ascertain the merits and risks of the transactions described herein prior to purchasing the Notes.

FOR FLORIDA RESIDENTS

The securities referred to in this Memorandum have not been registered under the Florida Securities Act. If sales are made to five (5) or more investors in Florida, any Florida investor may, at his option, void any purchase hereunder within a period of three (3) days after he (a) first tenders or pays to the Company, an agent of the Company, or an escrow agent the consideration required hereunder or (b) delivers his executed Subscription Documents, whichever occurs later. To accomplish this, it is sufficient for a Florida investor to send a letter or telegram to the Company within such three (3) day period, stating that he is voiding and rescinding the purchase. If any investor sends a letter, it is prudent to do so by certified mail, return receipt requested, to ensure that the letter is received and to evidence the time of mailing.

FOR NEW HAMPSHIRE RESIDENTS

Neither the fact that a registration statement or an application for a license has been filed under Chapter 421-B of the New Hampshire Revised Statutes with the State of New Hampshire nor the fact that a security is effectively registered or a person is licensed in the State of New Hampshire constitutes a finding by the Secretary of State that any document filed under RSA-421-B is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the Secretary of State has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with the provisions of this paragraph.

TABLE OF CONTENTS

EXHIBITS

WHO MAY INVEST

The offer and sale of Notes is being made in reliance on an exemption from the registration requirements of the Securities Act. Accordingly, distribution of the Memorandum is strictly limited to persons who meet the requirements and make the representations set forth below. The Company reserves the right to declare any prospective Noteholder ineligible to purchase Notes based upon any information which may become known or available to the Company concerning the suitability of such prospective Investor, for any other reason or for no reason, in the Company's sole discretion.

The Notes are highly speculative, involve a very high risk, and are suitable only for persons of substantial financial means who have no need for liquidity in this investment. Notes will be sold only to prospective Noteholders who:

(1) purchase a minimum of $50,000 in Notes unless the Company, at its sole discretion, waives the minimum purchase requirement;

(2) represent in writing that they are "Accredited Investors" (as defined by Rule 501 of Regulation D under the Securities Act); and

(3) satisfy the investor suitability requirements established by the Company and as may be required under federal or state law.

Each prospective Noteholder must represent in writing that he meets, among others, **ALL** of the following requirements:

(a) He has received, read and fully understands this Memorandum, he is basing his decision to invest on this Memorandum, he has relied on the information contained in this Memorandum, and he has not relied upon any representations made by any other person;

(b) He understands that an investment in the Notes involves substantial risks and he is fully cognizant of, and understands, all of the risk factors relating to an investment in the Notes, including, without limitation, those risks set forth in the section of this Memorandum entitled "Risk Factors";

(c) His overall commitment to investments that are not readily marketable is not disproportionate to his individual net worth, and his investment in the Notes will not cause such overall commitment to become excessive;

(d) He has adequate means of providing for his financial requirements, both current and anticipated, and has no need for liquidity in this investment;

(e) He can bear, and is willing to accept, the economic risk of losing his entire investment in the Notes;

(f) He is acquiring the Notes for his own account and for investment purposes only and has no present intention, agreement or arrangement for the distribution, transfer, assignment, resale or subdivision of the Notes; and

(g) He is an Accredited Investor as defined in Rule 501 of Regulation D under the Securities Act.

In addition to certain institutional investors, a prospective Noteholder who meets one of the following tests will qualify as an "*Accredited Investor*:"

(1) the prospective Noteholder is a natural person who had individual income in excess of **$200,000** in each of the two most recent years, or joint income with that person's spouse in excess of **$300,000** in each of these years, and has a reasonable expectation of reaching the same income level in the current year;

(2) the prospective Noteholder is a natural person whose individual net worth, or joint net worth with that person's spouse, exceeds **$1,000,000** at the time of his investment in the Notes;

(3) the prospective Noteholder is an organization described under Section 501(c)(3) of the Code, a corporation, Massachusetts or similar business trust, or a partnership not formed for the specific purpose of acquiring the Notes, with total assets in excess of **$5,000,000**;

(4) the prospective Noteholder is an entity (including an IRA) in which all of the equity owners are Accredited Investors as defined in subparagraphs (1) and (2) above;

(5) the prospective Noteholder is a trust with total assets in excess of **$5,000,000**, not formed for the specific purpose of acquiring the Notes, the purchase of which is directed by a "sophisticated person" as defined in Rule 506(b)(2)(ii) of Regulation D under the Securities Act; or

(6) the prospective Noteholder is an employee benefit plan within the meaning of ERISA in which the investment decision is made by a plan fiduciary (as defined in Section 3(21) of ERISA) which is either a bank, savings and loan association, insurance company, or registered investment adviser; or the employee benefit plan has total assets in excess of **$5,000,000**; or it is a self-directed plan in which investment decisions are made solely by persons who are Accredited Investors.

"Net worth" is defined as the difference between total assets and total liabilities, including home, home furnishings and personal automobiles. In the case of fiduciary accounts, the net worth and/or income suitability requirements must be satisfied by the beneficiary of the account, or by the fiduciary, if the fiduciary directly or indirectly provides funds for the purchase of the Notes.

Representations with respect to the foregoing and certain other matters will be made by each prospective Noteholder in the Subscription Agreement. The Company will rely on the accuracy of such representations and may require additional evidence that the prospective Noteholder satisfies the applicable standards at any time prior to acceptance. Prospective Noteholders are not obligated to supply any information so requested by the Company, but the Company may reject a Subscription Agreement from any prospective Noteholder who fails to supply any information so requested. Prospective Noteholders who are unable or unwilling to make the foregoing representations may not purchase Notes.

The investor suitability requirements stated above represent minimum suitability requirements established by the Company for prospective Noteholders. However, satisfaction of these requirements will not necessarily mean that Notes are a suitable investment for the prospective Noteholder, or that the Company will accept the prospective Noteholder's Subscription Agreement. Furthermore, the Company, as appropriate, may modify such requirements at its sole discretion, and such modifications may raise the suitability requirements for prospective Noteholders.

No person has been authorized by the Company to make any representations or furnish any information with respect to the Company or the Notes other than as set forth in this Memorandum or other documents or information furnished by the Company upon request as described herein. This Memorandum contains summaries of certain other documents, which summaries are believed to be accurate, but reference is hereby made to the full text of the actual documents for complete information concerning the rights and obligations of the parties thereto. Such information necessarily incorporates significant assumptions, as well as factual matters. All documents relating to this Offering and related documents and agreements, if readily available to the Company, will be made available to a prospective Noteholder or representatives upon request to the Company. During the course of this Offering and prior to sale, each prospective Noteholder is invited to ask questions of and obtain additional information from the Company concerning the terms and conditions of this Offering, the Company, the Notes and any other relevant matters, including, but not limited to, additional information necessary or desirable to verify the accuracy of the information set forth in this Memorandum. The Company will provide the information to the extent it possesses such information or can obtain it without unreasonable effort or expense.

This Memorandum constitutes an offer only to the offeree whose name appears in the appropriate space on the cover page. Furthermore, this Memorandum does not constitute an offer or solicitation to anyone in any jurisdiction in which such an offer or solicitation is not authorized. This Memorandum has been prepared solely for the benefit of persons interested in the proposed private placement of the Notes offered hereby. Any reproduction or distribution of this Memorandum, in whole or in part, or the disclosure of any of its contents without the prior written consent of the Company is expressly prohibited. The recipient, by accepting delivery of this Memorandum, agrees to return this Memorandum and all documents furnished herewith to the Company or its representatives immediately upon request if the recipient does not purchase any Notes, or if this Offering is withdrawn or terminated.

The Notes are not suitable investments for a qualified plan, an IRA or other tax exempt entity. Therefore, this Memorandum does not discuss risks that may be associated with an investment in the Notes by a qualified plan, an IRA or other tax exempt entity.

If you do not meet the requirements described above, do not read further and immediately return this Memorandum to the Company. In the event you do not meet such requirements, this Memorandum does not constitute an offer to sell Notes to you.

Restrictions Imposed by the USA PATRIOT Act and Related Acts

The Notes may not be offered, sold, transferred or delivered, directly or indirectly, to any "Unacceptable Investor." "Unacceptable Investor" means any person who is a:

- Person or entity who is a "designated national," "specially designated national," "specially designated terrorist," "specially designated global terrorist," "foreign terrorist organization," or "blocked person" within the definitions set forth in the Foreign Assets Control Regulations of the U.S. Treasury Department;

- Person acting on behalf of, or any entity owned or controlled by, any government against whom the U.S. maintains economic sanctions or embargoes under the Regulations of the U.S. Treasury Department – including, but not limited to the "Government of Sudan," the "Government of Iran," the "Government of Libya," and the "Government of Syria";

- Person or entity who is within the scope of Executive Order 13224-Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001; or

- Person or entity subject to additional restrictions imposed by the following statutes or regulations and executive orders issued thereunder: the Trading with the Enemy Act, the Iraq Sanctions Act, the National Emergencies Act, the Antiterrorism and Effective Death Penalty Act of 1996, the International Emergency Economic Powers Act, the United Nations Participation Act, the International Security and Development Cooperation Act, the Nuclear Proliferation Prevent Act of 1994, the Foreign Narcotics Kingpin Designation Act, the Iran and Libya Sanctions Act of 1996, the Cuban Democracy Act, the Cuban Liberty and Democratic Solidarity Act and the Foreign Operation, Export Financing and Related Programs Appropriations Act or any other law of similar import as to any non-U.S. Country, as each such act or law has been or may be amended, adjusted, modified or reviewed from time to time.

HOW TO SUBSCRIBE

If, after carefully reading the entire Memorandum, obtaining any other information available and being fully satisfied with the results of pre-investment due diligence activities, a prospective Noteholder would like to purchase Notes, a prospective Noteholder should complete and sign the attached Subscription Agreement. The full purchase price for the Notes must be paid by check upon submission of the Subscription Agreement for the Notes. The minimum purchase amount is $50,000, although the Company may lower the minimum purchase requirement at its sole discretion.

Instructions for subscribing for the Notes are in the Subscription Agreement. Pending receipt and acceptance of subscriptions for the Minimum Offering Amount, all subscription payments received for Notes will be deposited in the escrow account at Home Federal Bank no later than the next business day after receipt by the Company. If the Minimum Offering Amount has not been received and accepted by December 31, 2008 (which may be extended to June 30, 2009 in the Company's sole discretion), none of the Notes will be sold and the amount each prospective Noteholder paid will be promptly returned to in full.

Subscription Agreements and all attachments should be mailed or delivered to the Company at:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Don Steeves

All funds should be mailed, delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Don Steeves

Wire Instructions:
Account Number: 1001001602349
Routing/ABA Number: 324170140
Account Name: Clearwater 2008 Note Program, LLC

Upon receipt of the signed Subscription Agreement, verification of the prospective Noteholder's investment qualifications, and acceptance of the prospective Noteholder's subscription by the Company (in the Company's sole discretion), the Company will notify each prospective Noteholder of receipt and acceptance of the subscription. In the event the Company does not accept a prospective Noteholder's subscription for the Notes for any reason, the Company will promptly direct Home Federal Bank to return or cause to be returned the escrowed funds to such subscriber.

An escrow account at Home Federal Bank will be established to hold the proceeds of this Offering. Home Federal Bank has not recommended nor provided any advice in connection with the purchase of the Notes. Upon written instruction by the Company and upon obtaining the Minimum Offering Amount, the funds in the escrow account will be released to the operating account of the Company. For purposes of calculating whether the Minimum Offering Amount has been reached, Notes sold at a discount will be considered sold at the full purchase price of $50,000.

Acceptance of Subscriptions

The Company may, at its sole discretion, accept or reject any Subscription Agreement, in whole or in part, for a period of 30 days after receipt of the Subscription Agreement. Any Subscription Agreement not accepted within 30 days of receipt shall be deemed rejected. The Company may terminate this Offering at any time, for any reason or no reason, at its sole discretion.

OFFERING SUMMARY

The following summary provides certain limited information about the Company, the Notes and this Offering. It should be read in conjunction with, and is qualified in its entirety by, the detailed information appearing elsewhere in this Memorandum. **You are required to read this entire Memorandum and whatever additional information you request before making an investment in the Notes.**

The Offering

Securities Offered:	The securities being offered hereby are debt investments issued by the Company. The Company is offering $20,000,000 aggregate principal amount of 9.0% Notes due December 31, 2015, subject to increase to $40,000,000 the sole discretion of the Company. The Notes will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC. See "Description of the Notes."
Use of Proceeds:	The Company will use the proceeds from the offering of the Notes to provide secured financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, an Idaho limited liability company, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. Such projects may include, without limitation, acquisition, entitlement, and development of and construction on undeveloped real property and purchase or refinance of existing real estate assets. See "Estimated Use of Proceeds" and "Business Plan."
Guaranty:	The repayment of the principal amount of the Notes (which principal includes re-invested interest) will be guaranteed by RE Capital Investments, LLC. See the Guaranty attached hereto as Exhibit D, "Description of the Notes."
Investor Suitability Requirements:	This Offering is strictly limited to Accredited Investors (as defined under Rule 501 of Regulation D under the Securities Act) who meet certain minimum financial and other requirements. Purchasers residing in certain states may need to meet additional standards. The Company at its sole and absolute discretion reserves the right to approve or disapprove each prospective Noteholder. See "Who May Invest."
Minimum Purchase:	The Notes are being issued with a minimum investment of $50,000 and in additional denominations of $1,000; however, smaller investments may be available at the sole discretion of the Company. See "Plan of Distribution."
Minimum Offering Amount:	The Minimum Offering Amount of the Notes is $1,000,000. If the Minimum Offering Amount has not been raised by December 31, 2008 (which may be extended to June 30, 2009 at the sole discretion of the Company), none of the Notes will be sold and the amount you paid will be promptly returned to you in full. See "Plan of Distribution – The Offering."
Offering Termination Date:	The Company will offer Notes until the earlier of the date on which the Maximum Offering Amount has been raised or December 31, 2008, which may be extended to June 30, 2009 at the sole discretion of the Company.
Risks:	An investment in Notes is highly speculative and involves substantial risks. See "Risk Factors" beginning on page 9 for a complete discussion of the risks, including, but not limited to, the following: • there is no certainty as to an investment in Notes being profitable; • underlying risks inherent to the individual real estate projects for

which the proceeds are used, including the risks associated with residential and commercial development;
- risks of national, regional, and local economic downturn;
- the Notes are not a diversified investment; and
- there are various conflicts of interest among the Company, the Manager and their Affiliates.

The Company

Organization: The Company is a newly-formed Idaho limited liability company. The Company will use the proceeds from the sale of the Notes to provide secured financing for various real estate acquisition and development projects. See "Business Plan" and "Management of the Company."

Manager: Clearwater REI, LLC, an Idaho limited liability company, will act as the Manager. The Manager's address is 1300 E. State Street, Suite 103, Eagle, Idaho 83616, and its telephone number is (208) 639-4488. See "The Manager."

Interest Reinvestment Program: Noteholders may choose one of two options for the interest earned on their Notes:

- Interest Payment: Noteholders may elect to receive monthly interest payments in an amount equal to 9.0% simple interest on their principal investment. All distributions will paid in arrears on the fifteenth day of each month, beginning with the month following the month in which the Notes are issued.
- Interest Reinvestment Program (IRP): By giving written notice to the Company of their desire to do so not later than November 30, Noteholders may elect to have their interest reinvested and compounded monthly beginning on the first day of the year immediately following the date on which such notice was received by the Company. Reinvested interest will be compounded at the annual rate of 9.0%. Interest that is reinvested will be added to and considered part of the principal amount of the Note at the end of each calendar month.

Interest Payments: The Company intends to: (a) pay simple or compound interest at the annual rate of 9.0% which interest will accrue at the end of each month during the term of the Notes and will be distributed or reinvested depending on the elections of the Noteholders; and (b) by December 31, 2015 return the principal amount plus all accrued but unpaid interest thereon to the Noteholders. **There is no assurance that these objectives will be achieved.** See "Description of the Notes."

Debt Obligations: Payment of all interest and return of the principal amount to Noteholders is the obligation of the Company. RE Capital Investments, LLC will guarantee repayment of the original principal amount of the Notes. Interest on the Notes will accrue at the end of each month during the term of the Notes and will be distributed or reinvested depending on the elections of the Noteholders. See "Clearwater REI, LLC." and "Description of the Notes."

Callability: Beginning December 31, 2011, the Company, at is sole discretion, may call all or any portion of the Notes, at any time, for 100% of the original principal amount of such Notes, plus accrued but unpaid interest, upon 90 days written notice to the Noteholders, without penalty.

Liquidity:	Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company. Notwithstanding the foregoing, upon the death of a Noteholder, the personal representative of such Noteholder may call the Note of such Noteholder and will receive the principal amount of such note, plus all accrued but unpaid principal thereon by giving written notice to the Company not less than 90 days following the date of death of such Noteholder. Interest will be payable through the date on which the principal is received by the Noteholder's personal representative and all principal and interest will be paid by the Company not later than 30 days following receipt of such notice.
Reports:	Annual audited financial and operational reports and annual tax information of the Company will be provided to the Noteholders. See "Reports to Noteholders."
Federal Tax Consequences:	It is anticipated that any and all federally taxable income resulting from an investment in Notes will be taxable at ordinary income tax rates and not at capital gains tax rates. See "Federal Income Tax Consequences."

RISK RELATING TO FORWARD LOOKING STATEMENTS

Certain matters discussed in this Memorandum, are forward-looking statements. The Company has based these forward-looking statements on its current expectations and projections about future events. These forward-looking statements are subject to risks, uncertainties and assumptions about the secured financings and other investment made by the Company, including, among other things, factors discussed under the heading "Risk Factors" in this Memorandum and the following:

- economic outlook;
- capital expenditures;
- cost reduction;
- cash flow;
- financing activities; and
- related industry developments, including trends affecting the Company's financial condition and results of operations.

The Company intends to identify forward-looking statements in this Memorandum by using words or phrases such as "anticipates," "believes," "estimates," "expects," "intends," "objective," "plan," "predict," "project" and "will be" and similar words or phrases, or the negative thereof or other variations thereof or comparable terminology. All forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual transactions, results, performance or achievements of the Company to be materially different from any future transactions, results, performance or achievements expressed or implied by such forward-looking statements. The cautionary statements set forth under the caption "Risk Factors" and elsewhere in this Memorandum identify important factors with respect to such forward-looking statements, including the following factors that could affect such forward-looking statements:

- national and local economic and business conditions that, among other things, will affect demand for properties and the availability and terms of financing;
- underlying real estate investment risks;
- the availability of debt and equity capital; and
- governmental approvals, actions and initiatives, including the need for compliance with environmental and safety requirements, and changes in laws and regulations or the interpretation thereof.

Although the Company believes the expectations reflected in such forward-looking statements are based upon reasonable assumptions, there is no assurance that the Company's expectations will be attained or that any deviations will not be material. The Company undertakes no obligation to publicly release the result of any revisions to these forward-looking statements that may be made to reflect any future events or circumstances.

In addition, any projections and representations, written or oral, which do not conform to the projections contained in this Memorandum, must be disregarded, and their use is a violation of law. The projections contained in or referenced by this Memorandum are based upon specified assumptions. If these assumptions are incorrect, the projections also would be incorrect. No representation or warranty can be given that the estimates, opinions or assumptions made in or referenced by this Memorandum will prove to be accurate. Prospective Noteholders should carefully review the assumptions set forth in or referenced by this Memorandum.

RISK FACTORS

An investment in the Notes is highly speculative and is suitable only for persons who are able to evaluate the risks of the investment. An investment in the Notes should be made only by persons able to bear the risk of and to withstand the total loss of their investment. In addition to the factors set forth elsewhere in this Memorandum and general investment risks, prospective Noteholders should consider the following risks before making a decision to purchase the Notes.

General Risks

Risks of No Guaranteed Return. There is no assurance or guarantee that the cash flow, profits or capital of the Company will be sufficient to pay all interest and repay principal on the Notes. Although RE Capital Investments, LLC will guarantee the Company's obligation to repay the original principal amount of the Notes there is no assurance that RE Capital Investments, LLC will be able to satisfy its obligations pursuant to such guaranty.

Risks Regarding the Manager. The Manager and Affiliates control other real estate development projects. The Manager and Affiliates may, in the future, become involved in other real estate development projects and may guarantee other equity or debt offerings to finance current or future development projects, which may have risk associated with those projects. If the Manager is required to support future guarantees on other debt obligations or otherwise, the Manager may not have sufficient funds or resources to assist the Company and perform its duties as the Manager.

New Venture. The Company is a new entity with no operating history. The Company is subject to the risks involved with any speculative new venture. No assurance can be given that the Company will be profitable.

Risk of Company's Related Party Lending and Thin Capitalization. The Company is a newly formed Idaho limited liability company formed to issue the Notes and provide secured financing for investments in real estate with a focus on development projects primarily to Affiliates of the Company. Since the Company is newly formed, it is thinly capitalized. Because of the thin capitalization, the Company will not have sufficient assets beyond its interest in the secured loans it makes, if any, to make payments on the Notes.

Speculative Investment; No Control of Possible Offering Expansion. The Company's goals are highly speculative, and there is no assurance that the Company will be able to meet any of its goals. Noteholders should be aware that they may not earn a substantial return on their investment and may, in fact, lose their entire investment.

Reliance on Management. All decisions regarding management of the Company's affairs will be made exclusively by the Manager and not by any of the Noteholders. Accordingly, you should not buy Notes unless you are willing to entrust all aspects of management to the Manager or its successor(s). You should carefully evaluate the personal experience and business performance of the Company, Manager and its principals and the financial condition of the Manager. See "The Manager" below. The Manager may retain independent contractors to provide various services to the Company. The independent contractors will have no fiduciary duty to the Noteholders, and may not perform as expected.

Absence of Note Rating. The Company has not applied and does not intend to apply to any creditworthiness rating agency for a rating on the Notes. Therefore, any comparison made or conclusion drawn regarding the nature and type of the Notes, as opposed to a rated debt obligation, would be at the risk of the individual prospective Investor.

Absence of Public Market; Nonliquidity; Market Value. The Notes will not be listed on any national securities exchange or included for quotation through an inter-dealer quotation system of a registered national securities association. The Notes constitute new issues of securities with no established trading market. Furthermore, it is not anticipated that there will be any regular secondary market following the completion of the offering of the Notes. Therefore, an investment in the Notes should be considered nonliquid. In addition, even in the unlikely event that a secondary market for the Notes were to develop, no assurance can be given that the initial offering prices for the Notes will continue for any period of time. The market value of the Notes might be discounted from their initial offering prices, depending on prevailing interest rates, the market for similar securities, and other factors. Accordingly, the Notes should be purchased for their projected returns only and not for any resale potential, which may or may not exist.

Absence of Third-Party Registrar and Trustee. The Company, as the designated Registrar, will maintain the Note Register and record all transfers of Notes. The Company may have a conflict of interest in serving as the Registrar, and the absence of a third-party Registrar may result in less protection to Noteholders than might be provided by a third-party Registrar. There will also not be any third-party trustee for the Notes. Noteholders will rely upon the Company, its officers, and its Affiliates to invest the Note proceeds wisely and profitably.

Conflicts of Interest. Conflicts of interest between the Company and the various roles, activities and duties of the Manager and its Affiliates may occur from time to time. The principals of the Manager and its Affiliates are employed independently of the Company and will engage in other activities, some of which may compete with the Company. The Manager will have conflicts of interest in allocating management time, services and functions between the Company and other current and future activities. The Manager believes that it will have sufficient staff, consultants, independent contractors and business and property managers to perform adequately its duties. The Noteholders will not have any interest in any future entities or business ventures formed or developed by the Manager or any of its Affiliates. Any conflict of interest may result in the rights of the Company not being adequately protected to the detriment of its Noteholders. None of the agreements or arrangements, including those relating to compensation, between the Company, the Manager or their Affiliates, are the result of arm's-length negotiations. See "Conflicts of Interest" below.

There are general risks of investment in the portfolio properties. The economic success of an investment in the Notes will depend upon the results of operations of the properties that secure the Company's loans, which will be subject to those risks typically associated with investments in real estate. Fluctuations in vacancy rates, rent schedules and operating expenses can adversely affect operating results or render the sale or refinancing of a portfolio property difficult or unattractive. No assurance can be given that certain assumptions as to the future levels of occupancy of the properties, cost of tenant improvements or future costs of operating a portfolio property will be accurate since such matters will depend on events and factors beyond the control of the Manager. Such factors include continued validity and enforceability of the leases, vacancy rates for properties similar to the portfolio properties, financial resources of tenants and rent levels near the portfolio properties, adverse changes in local population trends, market conditions, neighborhood values, local economic and social conditions, supply and demand for property such as the portfolio properties, competition from similar properties, interest rates and real estate tax rates, governmental rules, regulations and fiscal policies, the enactment of unfavorable real estate, rent control, environmental or zoning law, and hazardous material law, uninsured losses, effects of inflation, and other risks.

A general economic downturn or regional economic softness could adversely affect the economic performance of the Company's loans. Prospective Noteholders should be aware that periods of weak economic performance in the United States could adversely affect the properties that secure the Company's loans. In addition, softness in a regional or state economy could materially and adversely impact the actual or projected rental rates and operations of properties in that area and therefore the ability to sell these properties on favorable terms.

Properties securing the Company's loans may not meet projected occupancy. If the tenants in the properties securing the Company's loans do not renew or extend their leases or if tenants terminate their leases, the operating results of the properties could be substantially and adversely affected by the loss of revenue and possible increase in operating expenses not reimbursed by the tenants. There can be no assurance that the properties will be substantially occupied at projected rents. The Company anticipates a minimum occupancy rate for the properties, but there can be no assurance that the properties will maintain the minimum occupancy rate or meet the Company's anticipated lease-up schedule. In addition, lease-up of the unoccupied space may be achievable only at rental rates less than those anticipated by the Company.

Properties securing the Company's loans may contain toxic and hazardous materials. Federal, state and local laws impose liability on a landowner for releases or the otherwise improper presence on the premises of hazardous substances. This liability is without regard to fault for, or knowledge of, the presence of such substances. A landowner may be held liable for hazardous materials brought onto the property before it acquired title and for hazardous materials that are not discovered until after it sells the property. Similar liability may occur under applicable state law. If any hazardous materials are found within a property in violation of law at any time, the owner may be liable for all cleanup costs, fines, penalties and other costs. This potential liability will continue after the owner sells the property and may apply to hazardous materials present within the property before the owner acquired the property. If losses arise from hazardous substance contamination which cannot be recovered from a responsible party, the financial viability of that property may be substantially affected. It is possible that the property securing a loan made by the Company will have known or unknown environmental problems which may adversely affect the Company.

Properties securing the Company's loans may contain mold. Mold contamination has been linked to a number of health problems, resulting in recent litigation by tenants seeking various remedies, including damages and ability to terminate their leases. Originally occurring in residential property, mold claims have recently begun to appear in commercial properties as well. Several insurance companies have reported a substantial increase in mold-related claims, causing a growing concern that real estate owners might be subject to increasing lawsuits regarding mold contamination. No assurance can be given that a mold condition will not exist at one or more of the properties securing the Company's loans, with the risk of substantial damages, legal fees and possibly loss of tenants. It is unclear whether such mold claims would be covered by the customary insurance policies to be obtained for the owners of the properties.

The owners of the properties securing the Company's loans will receive limited representations and warranties from the seller. The properties will generally be acquired with limited representations and warranties from the sellers regarding the condition of the property, the status of leases, the presence of hazardous substances, the status of governmental approvals and entitlements and other significant matters affecting the use, ownership and enjoyment of the property. As a result, if defects in the property or other matters adversely affecting the property are discovered, the owner may not be able to pursue a claim for damages against the seller of the property. The extent of damages that the owner may incur as a result of such matters cannot be predicted, but potentially could result in a significant adverse affect on the owner's ability to pay the Company and the value of the collateral.

Private Offering and Liquidity Risks

Maximum Proceeds May Not Be Raised. The Company is seeking gross proceeds from this Offering of a minimum of $1,000,000 and up to a maximum of $20,000,000, subject to increase to $40,000,000 at the sole discretion of the Company. There can be no assurances that the Maximum Offering Amount will be raised. The Company may terminate the Offering at any time at its sole discretion.

Determination of Note Price. The purchase price of the Notes has been arbitrarily determined and is not the result of arm's-length negotiations. The price of the Notes was determined primarily by the capital needs of the Company and bears no relationship to any established criteria of value such as book value or earnings per share of the Company, or any combination thereof. Further, the price of the Notes is not based on past earnings of the Company. No valuation or appraisal of the Company's potential business has been prepared.

Limited Transferability of Notes. To buy Notes prospective Noteholders must represent that they are acquiring the Notes for investment and not with a view to distribution or resale, that potential Noteholders understand the Notes are not freely transferable and, in any event, that they must bear the economic risk of investment in the Notes for an indefinite period of time because the Notes have not been registered under the Securities Act or applicable state "Blue Sky" or securities laws; and the Notes cannot be sold unless they are subsequently registered or an exemption from such registration is available and unless you comply with the other applicable provisions of the Note, this Memorandum and any subscription documents. There is no public or other trading market for the Notes, and it is highly unlikely that any market will develop. Thus, except for the limited provision for liquidity, prospective Noteholders cannot expect to be able to liquidate their investments. Further, the sale of the Notes may have adverse federal income tax consequences. The transfer of Notes requires the prior written consent of the Manager. There is no guarantee that the Manager will consent to any transfer.

Unregistered Offerings. The offering of the Notes *will not* be registered with the SEC under the Securities Act or with the securities agency of any state. The Notes are being offered in reliance on an exemption from the registration provisions of the Securities Act and state securities laws applicable to offers and sales to investors meeting the investor suitability requirements set forth herein. See "Who May Invest." If the Manager, the Company, or the members of the Selling Group should fail to comply with the requirements of such exemption, Noteholders may have the right to rescind their purchase of the Notes. This might also occur under the applicable state securities or "Blue Sky" laws and regulations in states where the Notes will be offered without registration or qualification pursuant to a private offering or other exemption. If a number of Noteholders were successful in seeking rescission, the Company and the Manager would face severe financial demands that would adversely affect the Company as a whole and, thus, the investment in the Notes by the remaining Noteholders.

Lack of Agency Review. Since the offering of the Notes is a private offering and, as such, is not registered under federal or state securities laws, prospective Noteholders do not have the benefit of review of this Memorandum by the SEC or any state securities commission. The terms and conditions of the Offering may not comply with the guidelines and regulations established for real estate programs that are required to be registered and qualified with those agencies.

Purchase of Notes by the Manager and/or its Affiliates. The Manager and/or its Affiliates may, in their sole discretion, buy Notes for any reason deemed appropriate by them. However, they will not acquire Notes prior to the Minimum Offering Amount having been sold. Any purchase of Notes by the Manager or its Affiliates will be on the same terms as other investors, except that it may be made net of commissions. Upon any such acquisition of Notes, the Manager or its Affiliates will have the same rights as other Noteholders, including the right to vote on all matters subject to the vote of Noteholders. The Manager and its Affiliates will acquire any Notes for their own accounts and not with a view towards the resale or distribution of such Notes. The Manager and its Affiliates will not acquire Notes until the Minimum Offering Amount has been reached.

No Legal Representation of Noteholders. Each Noteholder acknowledges and agrees that Counsel representing the Company, the Manager and their Affiliates, does not represent and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing any or all of the Noteholders in any respect.

Investment by Tax-Exempt Noteholders. In considering an investment in the Notes of a portion of the assets of a trust of a pension or profit-sharing plan qualified under Section 401(a) of the Code and exempt from tax under Section 501(a), a fiduciary should consider if: (a) the investment satisfies the diversification requirements of Section 404 of ERISA; (b) the investment is prudent, since the Notes are not freely transferable and there may not be a market created in which the fiduciary can sell or otherwise dispose of the Notes; and (c) the Notes or the underlying assets owned by the Company are "plan assets" under ERISA. See "Investment by Qualified Plans and IRAs" below.

Loss on Dissolution and Termination. In the event of dissolution or termination of the Company as provided in the operating agreement of the Company, the proceeds realized from the liquidation of the Company's assets will be distributed among the Noteholders, members and certain amounts owed to the Manager, or its Affiliates, but only after the satisfaction of the claims of third-party creditors of the Company. The ability of a Noteholder to recover all or any portion of the investment under such circumstances will, accordingly, depend on the amount of net proceeds realized from the liquidation and the amount of claims to be satisfied therefrom. There can be no assurance that the Company will recognize any gains or realize net proceeds on liquidation.

Limitation of Liability/Indemnification of the Manager. The Manager and its attorneys, agents and employees may not be liable to the Company or the Members for errors of judgment and other acts or omissions not constituting gross negligence or willful malfeasance as a result of certain indemnification provisions in the operating agreement of the Company. A successful claim for indemnification would deplete the Company's assets by the amount paid.

Risks Relating to Conflicts of Interest

Loans to Affiliates. Most, if not all, of the loans to be made by the Company with the proceeds of this Offering will be made to Affiliates of the Company and the Manager. The interests of the Noteholders and the borrowers may differ materially with respect to the repayment of the Notes, and the Manager will be in a position to make decisions that could potentially be adverse to the Noteholders' interests in the Notes.

Activities outside of the Company that could cause conflicts of interest. The principals of the Manager and its Affiliates are employed independently of the Company and are engaged in activities other than this Offering. The Company and Affiliates will have conflicts of interest in allocating time, services and functions between various existing and future enterprises. The Manager's Affiliates may organize other business ventures that may compete directly with the Company. Further, the Company and its Affiliates have common ownership and management personnel which may result in material conflicts of interest to the possible detriment of the Noteholders. See "Conflicts of Interest."

Common ownership among the Manager and its Affiliates. The Manager and its Affiliates share common management. This may lead to a conflict of interest between their various roles as owners or officers of the Manager and its Affiliates. See "Conflicts of Interest."

The Company, the Manager and their Affiliates will receive compensation. The Company, the Manager and their Affiliates are entitled to receive certain significant fees and other significant compensation, payments and reimbursements from the sale of the Notes. See "Compensation of the Company, the Manager and their Affiliates."

USE OF PROCEEDS

The estimated sources and uses of funds in the Offering are as follows:

	Minimum Offering		Maximum Offering		Increased Offering Amount	
	Amount	Percent	Amount	Percent	Amount	Percent
SOURCE OF FUNDS						
Gross Proceeds	$ 1,000,000	100.00%	$ 20,000,000	100.00%	$ 40,000,000	100.00%
USE OF FUNDS	$ 1,000,000	100.00%	$ 20,000,000	100.00%	$ 40,000,000	100.00%
Offering Expenses						
Selling Commissions[1]	$ 93,000	9.30%	$ 1,860,000	9.30%	$ 3,720,000	9.30%
Organization and Offering[2]	$ 4,000	0.40%	$ 80,000	0.40%	$ 160,000	0.40%
Sponsor Compensation	$ 25,500	2.55%	$ 510,000	2.55%	$ 1,020,000	2.55%
Net Proceeds	$ 877,500	87.75%	$ 17,550,000	87.75%	$ 35,100,000	87.75%

[1] (1) Notes will be offered and sold on a "best efforts" basis by broker-dealers who are members of FINRA. The members of the Selling Group will receive selling commissions of up to 7.0% of the Gross Proceeds. The amount of Selling Commissions may be reduced, however, if a lower commission rate is negotiated with a member of the Selling Group. The Managing Broker-Dealer will receive up to 2.3% of the Gross Proceeds as compensation and reimbursement for due diligence and marketing expenses up to 1.0% of which may be re-allowed to members of the Selling Group for marketing and due diligence expenses. The aggregate amount of Selling Commissions and Expense Reimbursements paid to members of the Selling Group will not exceed 9.3% of the Gross Proceeds. See "Use of Proceeds" Affiliates of the Company may receive Selling Commissions in connection with the sale of Notes. See "Conflicts of Interest." The Company, in its discretion, may accept purchases of Notes net of all or an agreed portion of the Selling Commissions from subscribers purchasing through a registered investment advisor, from subscribers for Notes who are affiliates of the Company or a member of the Selling Group.

[2] Organization and Offering includes, but is not limited to, expense reimbursements, legal fees, printing and sales and marketing fees.

BUSINESS PLAN

The Company will use the proceeds from the offering of Notes to provide first mortgage financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. Such projects may include, without limitation; acquisition, entitlement, and development of and construction on undeveloped real property and purchase or refinance of existing real estate assets. The Company's loans will be collateralized by a first position mortgage or first deed of trust only. The Company expects that most, if not all, loans will be made to its Affiliates for projects located in Idaho, Arizona, California, and Nevada although the Company reserves the right, at its sole discretion, to make loans outside of those areas.

Real estate opportunities often do not allow time to secure bank or other financing. The Company will use the proceeds from the offering of Notes to provide the capital required in lieu of bank or other financing. Following closing, the Company intends to put permanent debt or equity in place following the acquisition or development and/or the properties will be sold making the Company's note funds revolving.

Investment Committee

Each proposed loan will be evaluated by a five member Investment Committee. The Investment Committee will apply the criteria detailed below in making a decision about whether to fund any proposed loan. No loan will be made by the Company without the prior approval of the Investment Committee. See "Management of the Company – The Manager – Investment Committee."

Investment Criteria

In order to qualify for loans from the Company, each borrowing entity will be required to provide a loan request detailing their needs and additionally will be required to satisfy additional requirements. The primary financial requirement is that the maximum loan to value, at the time of each loan is made, is no greater than the following:

- The loan to value ratio for pre-entitled land will not exceed 65%.
- The loan to value ratio will not exceed 75% for entitled land.
- The loan to value ratio will not exceed 80% for construction and existing commercial or residential structures.

The loan to value ratio will be defined by an MAI appraisal. In absence of an MAI appraisal, the loan to value ratio will be evidenced by a broker's opinion of value or by the Company's determination of value through the utilization of industry acceptable valuation methods. Other requirements that must be met by each borrowing entity will be at the discretion of the Investment Committee. The loan will be secured as a First Mortgage or First Deed of Trust on real property.

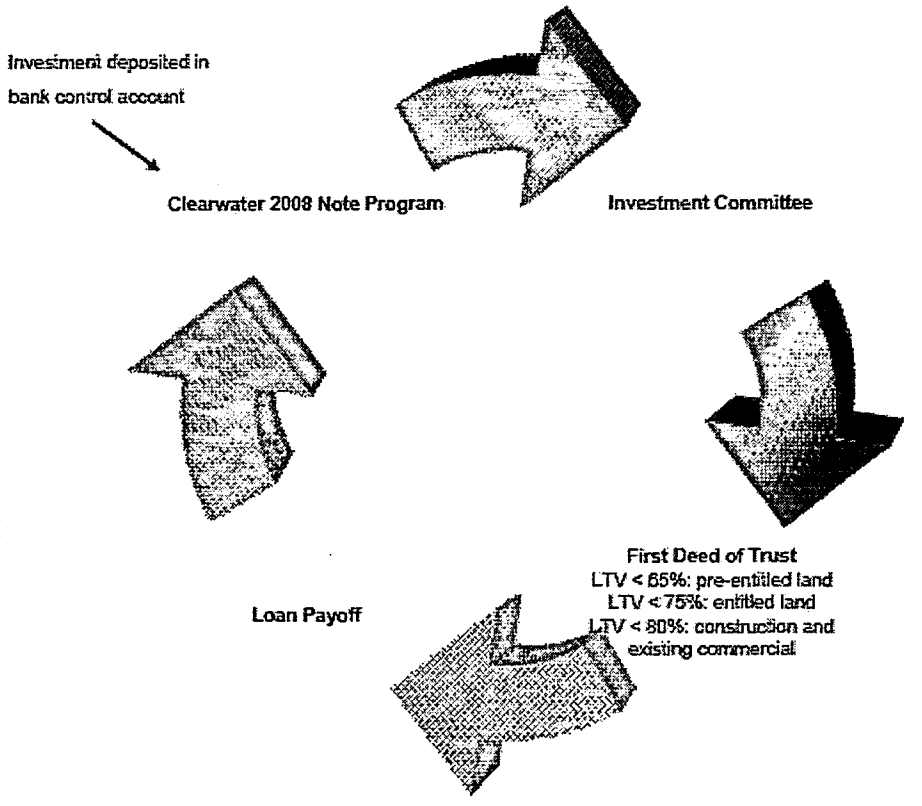
Documentation Required

The Investment Committee will require the following documentation at a minimum:

- ❖ Borrower Financial Statements
- ❖ Budgets or Proforma
- ❖ Projections
- ❖ Operating Statements
- ❖ Title & Survey
- ❖ Phase I, environmental questionnaire, or soils report (Investment Committee's discretion)
- ❖ Appraisal or Opinion of Value (Investment Committee's discretion)

Loan Process & Life Cycle

The following chart depicts the life cycle of loans made by the Company.



MANAGEMENT OF THE COMPANY

General

The Manager is Clearwater REI, LLC, an Idaho limited liability company. As discussed below, the key corporate officers of the Manager have extensive business experience, including real estate acquisition, development, construction, financing and management.

The principal executive offices of the Company and the Manager are located at 1300 E. State Street, Suite 103, Eagle, ID 83616. The Company's and Manager's telephone number at such address is (208) 639-4488.

Experience

Clearwater REI, LLC and its Affiliates have current and completed investment holdings in California, Idaho, Arizona and Nevada. Projects include raw land, entitlement, improvements, construction and sale of subdivisions, industrial, office, hotel, condo and master planned communities. The Manager and its Affiliates have completed projects having an aggregate value of $40,136,000 to date. The Manager and its Affiliates have demonstrated the ability to complete projects in a timely and efficient manner with strong returns being provided to investors from these projects. The Manager and its Affiliates have current projects in various stages of completion having an approximate aggregate value of $476,158,120. With 20 years of experience, the principals of the Company have a proven track record of providing strong risk adjusted returns thereby creating lasting value for their investors and partners alike. In conjunction with their priority of always keeping the investor first, their detailed approach in sourcing projects which stand alone in quality has ensured equity preservation and unlimited growth potential.

Principal Officers

RON MEYER, Chief Development Officer

Ron Meyer brings over 25 years of successful real estate and business experience including real estate investments, brokerage operations and mortgage lending. He has significant experience with respect to identifying

and negotiating real estate development opportunities. Mr. Meyer exhibits extensive knowledge of land acquisition and land entitlement, single-family home building, commercial land development and low-income housing development. He currently has projects in California, Nevada, Idaho and Arizona. Additionally, he has founded over 75 different business ventures with aggregate gross values in excess of $1 Billion.

CHRISTOPHER BENAK, Chief Development Officer

Chris Benak has 18 years experience in strategic business development, executive sales management, real estate development, property acquisition/disposition, and project management. Mr. Benak currently divides his time between (1) dealing with a project's acquisition, the initial management processes, including regulatory processes with city, county and state agencies and (2) ensuring project quality and delivery. He interfaces regularly with project managers, reviewing project timelines and cost analysis. Mr. Benak also secures strategic development partnerships, manages private investor funds and utilizes access to strategic market resources and networks to pursue competitive and cost-effective project deliverables.

DON STEEVES, National Sales Director & Broker-Dealer Relations

Don Steeves is directly responsible for interacting with legal, accounting and tax professionals in order to bring equity and debt offerings to the broker-dealer community. Mr. Steeves has been directly involved in debt offerings, tenant in common offerings and property acquisitions that exceeded $300 million. In these capacities, Mr. Steeves has had substantial experience in real estate and other investments. Mr. Steeves has spent time as a consultant in assisting in the acquisition and syndication in commercial property tenant-in-common owners and single buyers. He has also held several positions at various companies including Chief Financial Officer, Director of Marketing Operations, Director of Tax and Investor Relations, and Controller. Mr. Steeves is a Certified Public Accountant and a Financial Operations Principal with FINRA and holds Series 22, 28 and 63 licenses with FINRA.

BART COCHRAN, Vice President of Acquisitions & Operations

Bart Cochran maintains a very expansive book of nationwide lending relationships and he has extensive experience in the placement, processing, and closing of commercial financing in excess of $200 million in property acquisition and refinances. Much of this work was primarily done with secondary market lending sources, insurance companies, and portfolio lenders. Mr. Cochran has successfully negotiated large scale affiliate relationships which have allowed him to successfully place debt as a direct lender. This has provided Mr. Cochran with a significant competitive edge in the market. He also has experience in tenancy in common financial structuring, sales coordination, and one-off specialty transactions. Mr. Cochran is also a licensed real estate agent in the State of Idaho.

CHAD HANSEN, Vice President of Finance

Chad Hansen has a successful track record in the commercial real estate industry in placing and closing financing on various property types ranging from acquisitions to refinances. He currently maintains relationships with numerous conduit lenders, insurance companies, portfolio lenders, investment banks and private lenders that provide access to competitive terms. Mr. Hansen has been directly involved in tenant-in-common financial structuring and tenant-in-common permanent debt for multiple past offerings. Mr. Hansen has been involved in the placement and closing of over $200 million in commercial real estate financing with much of this directly related to the permanent debt secured on tenant-in-common offerings.

Investment Committee

The Investment Committee will include, but not be limited to the following principals:

- Ron Meyer, Chief Development Officer
- Chris Benak, Chief Development Officer
- Don Steeves, National Sales Director & Broker-Dealer Relations
- Bart Cochran, Vice President of Acquisitions & Operations
- Chad Hansen, Vice President of Finance.

The Investment Committee will, at its discretion, take into consideration the opinions and recommendations of the Company's employees for further insight if need be. The purpose of such decision is to ensure that all lending decisions are based on the collective knowledge and insight on such property or market.

Guaranty

RE Capital Investments, LLC will guarantee the repayment of the original principal amount of the Notes. See Exhibit C, Balance Sheet of RE Capital Investments, LLC as of July 31, 2008 and Exhibit D, Guaranty.

CLEARWATER REI, LLC

General

Clearwater REI, LLC acquires projects ranging from raw land to institutional grade commercial real estate across the United States. The company structures its offerings to afford accredited investors participation in investments proven to maximize returns while managing risk. The Company is committed to providing lasting value to its investor clients and seeks to create a partnership of trust with each investment instead of merely providing a simple investment solution. This is evidenced by the fact that the Company stands behind its offerings and intends to maintain a fractional interest in every investment offered thus sharing in the investment and demonstrating its absolute confidence in each offering.

Key Management

- RON MEYER, Chief Development Officer
- CHRIS BENAK, Chief Development Officer
- DON STEEVES, National Sales Director & Broker-Dealer Relations
- BART COCHRAN, Vice President of Acquisitions & Operations
- CHAD HANSEN, Vice President of Finance

See "Management of the Company – Principal Officers."

COMPENSATION OF THE COMPANY, THE MANAGER AND THEIR AFFILIATES

The following is a description of the compensation that the Company, the Manager and their Affiliates may receive in connection with this Offering. The compensation arrangements described below have been established by the Manager and are not the result of arm's-length negotiations. See "Conflicts of Interests." Unless otherwise indicated, all Offering and acquisition related amounts assume the Maximum Offering Amount is raised and will be reduced proportionately should a lesser amount be raised.

Form of Compensation	Description of Compensation and Entity Receiving	Estimated Amount of Compensation
Offering and Organization Stage:		
Sponsor Compensation:	The Manager or its Affiliates will receive a fee equal to 2.55% of the Gross Proceeds.	Approximately $510,000 for the Maximum Offering Amount ($1,020,000 if increased to $40,000,000).
Organization and Offering:	The Company will receive up to 0.40% of the Gross Proceeds.	Approximately $80,000 for the Maximum Offering Amount ($160,000 if increased to $40,000,000).

DESCRIPTION OF THE NOTES

The Notes are issued pursuant to and evidenced by the Note Register and will be held in "book-entry" on the Note Register by the Company. The offering of Notes by the Company will be limited to $20,000,000 in aggregate principal amount, subject to increase to $40,000,000 at the sole discretion of the Company. The Company intends to: (a) pay simple or compound interest at the annual rate of 9.0% which interest will accrue at the end of each month during the term of the Notes and will be distributed or reinvested depending on the elections of the Noteholders; and (b) by December 31, 2015 return the original principal amount plus all accrued but unpaid interest thereon to the Noteholders. **There is no assurance that these objectives will be achieved.**

Interest Reinvestment Program

Noteholders may choose one of two options for the interest earned on their Notes:

Interest Payment: Noteholders may elect to receive monthly interest payments in an amount equal to 9.0% simple interest on their principal investment. All distributions will paid in arrears on the fifteenth day of each month, beginning with the month following the month in which the Notes are issued.

Interest Reinvestment Program (IRP): By giving written notice to the Company of their desire to do so not later than November 30, Noteholders may elect to have their interest reinvested and compounded monthly beginning on the first day of the year immediately following the date on which such notice was received by the Company. Reinvested interest will be compounded at the annual rate of 9.0%. Interest that is reinvested will be added to and considered part of the principal amount of the Note at the end of each calendar month.

Liquidity; Callability

The Notes are issued with a minimum purchase of $50,000 and in additional denominations of $1,000; however, smaller purchases are available at the sole discretion of the Company. Notes will be issued and will begin accruing interest on the first day immediately following the day on which the investment proceeds therefore are received by the Company. Beginning December 31, 2011, the Company, at is sole discretion, may call all or any portion of the Notes, at any time, for 100% of the original principal amount of such Notes, plus accrued but unpaid interest, upon 90 days written notice to the Noteholders, without penalty. Beginning December 31, 2010 and once

annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company. See "Description of the Notes." Capitalized terms not otherwise defined herein have the meanings given to them in the Glossary.

Guaranty

The Notes will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC; however, they will not be secured by collateral.

Transfer and Exchange of Notes

Generally, the Notes will be non-transferable except in very limited circumstances. If a transfer is permitted by the Company, the transfer of Notes may be effected only by the registered owner thereof, at the Company's principal executive office in Eagle, Idaho. Substantial restrictions apply to the transfer of the Notes. The Notes have not been registered under the Securities Act, and therefore, cannot be sold or transferred unless they are subsequently registered under the Securities Act or an exemption from such registration is available. A Noteholder may, under certain circumstances, be permitted to transfer the Notes, but only to persons who meet certain suitability standards and the Company may require assurances that such standards are met before agreeing to any transfer of the Notes. Additionally, the Company may charge an administrative fee to effectuate any such transfer or exchange.

Death of Noteholder

Upon the death of a Noteholder, the personal representative of such Noteholder may call the Note of such Noteholder and will receive the principal amount of such note, plus all accrued but unpaid principal thereon by giving written notice to the Company not less than 90 days following the date of death of such Noteholder. Interest will be payable through the date of which the principal is received by the Noteholder's personal representative and all principal and interest will be paid by the Company not later than 30 days following receipt of such notice.

CAPITALIZATION

The following table sets forth as of December 31, 2008, the expected capitalization of the Company and capitalization as adjusted to give effect to the issuance and sale by the Company of the Maximum Offering Amount of the Notes offered hereby.

	As Adjusted[1] Maximum
Long-Term Debt:	
Notes	$20,000,000
Total funded long-term debt	$20,000,000
Members' Equity:	
100% Membership Interest:	$1,000
Total Members' equity	$1,000

[1] As adjusted to reflect the Offering of $20,000,000, which is subject to increase to $40,000,000 at the sole discretion of the Company.

PLAN OF DISTRIBUTION

The Offering

The Company is offering up to $20,000,000 (subject to increase to $40,000,000 at the sole discretion of the Company) aggregate principal amount of Notes due December 31, 2015, to prospective Noteholders who are Accredited Investors and who meet any additional requirements imposed by certain states or by the Company itself. The Notes are issued with a minimum purchase of $50,000 and in additional denominations of $1,000. However, a purchase for less than $50,000 may be accepted at the sole discretion of the Company. Persons desiring to purchase

Notes should follow the procedure described in "How to Subscribe." Certain Noteholders, including but not limited to, selling agents, if allowed by their broker-dealer, employees of the Company or Affiliates, and any other Noteholders at the sole discretion of the Company may buy Notes at a discount or net of selling commissions and expense reimbursements, reflecting, without limitation, the reduction in the broker-dealer commission payable by the Company on their purchase. The Company, at its sole discretion, may reject any subscription in whole or in part. Such rejection may be made for any reason. If the Minimum Offering Amount has not been reached and accepted by December 31, 2008 (which may be extended to June 30, 2009 in the Company's sole discretion), none of the Notes will be sold.

Notes will be offered and sold on a "best efforts" basis by broker-dealers who are members of FINRA. The members of the Selling Group will receive selling commissions of up to 7.0% of the Gross Proceeds. The amount of Selling Commissions may be reduced, however, if a lower commission rate is negotiated with a member of the Selling Group. The Managing Broker-Dealer will receive up to 2.3% of the Gross Proceeds as compensation and reimbursement for due diligence and marketing expenses up to 1.0% of which may be re-allowed to members of the Selling Group for marketing and due diligence expenses. The aggregate amount of Selling Commissions and Expense Reimbursements paid to members of the Selling Group will not exceed 9.3% of the Gross Proceeds. See "Use of Proceeds" Affiliates of the Company may receive Selling Commissions in connection with the sale of Notes. See "Conflicts of Interest." The Company, in its discretion, may accept purchases of Notes net of all or an agreed portion of the Selling Commissions from subscribers purchasing through a registered investment advisor, from subscribers for Notes who are affiliates of the Company or a member of the Selling Group.

The selling agreements to be entered into by the Company with the members of the Selling Group and RIA's contain provisions for indemnity from the Company with respect to liabilities, including certain civil liabilities under the Securities Act, which may arise from the use of this Memorandum in connection with the offering of the Notes. A successful claim by members of the Selling Group for indemnification could result in a reduction in the Company's assets. In the opinion of the Securities and Exchange Commission, indemnification for liabilities under the Securities Act is against public policy and therefore unenforceable.

Suitability Requirements for Noteholders

Purchase of the Notes is suitable only for persons of adequate financial means who have no need for liquidity with respect to this investment. There will not be any public market for the Notes and they should be considered illiquid.

Notes will be sold only to prospective Noteholders, or fiduciaries representing them, who represent in writing that they meet certain standards. See "Who May Invest." Prospective Noteholders residing in certain states may need to meet additional standards.

Prospective Noteholders should be aware that the Notes have not been registered under the Securities Act and therefore cannot be sold or transferred unless they are subsequently registered under the Securities Act or an exemption from such registration is available; accordingly, a Noteholder must bear the economic risk of the investment in the Notes for an indefinite time. Under certain very limited circumstances, a Noteholder may be permitted to transfer Notes, but then only to persons who meet certain suitability standards, and the Company will require assurances that such standards are met before agreeing to any transfer of the Notes.

Documents to be Completed by Noteholders

Each prospective Noteholder desiring to subscribe for the Notes must complete and sign the Subscription Agreement and Investor Instructions attached to this Memorandum (or separate copy thereof) and return them to the Company.

In the Subscription Agreement and Investor Instructions each prospective Noteholder will acknowledge, among other things that he or she: (1) is purchasing the Notes for investment only and not with any intention of reselling or distributing all or any portion thereof to others; (2) is able to bear the economic risk of investment in the Notes; and (3) has provided complete and accurate information to the Company concerning their status as an Accredited Investor and other relevant data. This Offering is intended to be a private offering exempt from the securities registration requirements of the Securities Act, by virtue of compliance with Regulation D promulgated under the Securities Act. Accordingly, the Notes offered hereby are not, and will not, be registered with the Securities and Exchange Commission or with any state securities commission.

FEDERAL INCOME TAX MATTERS

Circular 230 Notice: **Nothing contained in this Memorandum is intended or written by the Company or any of its advisors to be used, and it cannot be used, by any potential Noteholder or other person for the purpose of avoiding penalties that may be imposed under federal income tax law.** This Memorandum was written to support the promotion or marketing of the Notes and offered by the Company and other matters addressed in this Memorandum. Each potential Noteholder should seek advice concerning the tax aspects of and tax considerations involved in an investment in the Notes from an independent tax adviser.

General

The following is a general discussion of certain federal income tax consequences of the purchase, ownership and disposition of the Notes based upon the relevant provisions of the Internal Revenue Code of 1986, as amended (the "Code"), the regulations thereunder, existing judicial decisions and published rulings. Future legislative, judicial or administrative changes or interpretations, which may or may not be retroactive, could affect the federal income tax consequences to the Noteholders or The Company. The discussion below does not purport to deal with the federal income tax consequences applicable to all categories of investors, some of which may be subject to special rules. The discussion focuses primarily upon investors who will hold the Notes as "capital assets" (generally, Notes held for investment) within the meaning of the Code, you are advised to consult your own tax advisors with regard to the federal income tax consequences of acquiring, holding and disposing of the Notes, as well as state, local and other tax consequences resulting from an investment in the Notes.

If it were determined that the Notes should be treated for federal income tax purposes as an equity investment in the Company instead of as indebtedness, the changes in the tax consequences to Noteholders might be significant and adverse. If the Notes were treated as equity for tax purposes, Noteholders would be taxed as owners of the Company for tax purposes. The tax treatment of owners of a limited liability company is substantially different than the tax treatment of lenders to a limited liability company. If the Noteholders were treated as owners, their income might be significantly different in amount and character than the interest income on the Notes.

The following discussion is based on the assumption that the Notes will be treated in their entirety as indebtedness and not as an equity investment in the Company.

Interest paid or accrued on the Notes will be treated as ordinary income to the Noteholders. Interest paid to Noteholders will generally be taxable to them when received, but interest paid to Noteholders who report their income on the accrual method will be taxable to them when accrued, if earlier, regardless of when such interest is actually paid. The Company will report quarterly to the IRS and to the Noteholders of record interest paid or accrued on the Notes.

Market Discount

Noteholders who acquire Notes at a discount from the aggregate principal amount of the Notes generally will also be required to: (a) treat a portion of any gain realized on a sale, exchange, redemption or certain other dispositions (e.g., a gift) of the Notes as ordinary income to the extent of the accrued market discount and defer, until disposition of the Notes, all or a portion of the interest deductions attributable to any indebtedness incurred or continued to purchase or carry the Notes issued with market discount in the event such interest exceeds the interest on the Notes includable in the Noteholder's income or (b) elect to include such market discount in income as it accrues on all market discount instruments held by such Noteholder. It should be noted that market discount will be deemed to be zero if the amount allocable to each Note is less than one-quarter of one percent of the stated redemption price at maturity of such Notes times the number of complete years to its maturity remaining after the date of purchase.

Sale or Exchange of Notes

Upon a sale, exchange or redemption of a Note, the Noteholder will recognize gain or loss equal to the difference between the amount realized on such sale, exchange or redemption and his or her adjusted basis in the Notes. Such adjusted basis generally will equal the cost of the Notes to such Noteholder (increased by market discount if the election described above is made) included in his or her gross income with respect to such Notes and

reduced by any basis in the Notes previously allocated to payments on the Notes received by such Noteholder. Similarly, a Noteholder who receives a principal payment with respect to the Notes will recognize gain or loss equal to the difference between the amount of the payment and his or her adjusted basis in the Notes or portions thereof that are satisfied by such payment. Except as discussed above with respect to market discount, any such gain or loss will be capital gain or loss (provided the Notes are held as a capital asset) and will be long-term or short-term depending on whether the Notes have been held for more than one year. You should realize that the Notes are subject to restrictions on transferability. See "Risk Factors—Restrictions on Transfer."

Backup Withholding

A Noteholder may, under certain circumstances, be subject to "backup withholding" with respect to "reportable payments." This withholding generally applies if a Noteholder: (a) fails to furnish the Company with its taxpayer identification number ("TIN"); (b) furnishes the Company an incorrect TIN; (c) fails to report properly interest, dividends or other "reportable payments" as defined in the Code; or (d) under certain circumstances, fails to provide the Company with a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that the Noteholder is not subject to backup withholding. Backup withholding will not apply, however, with respect to certain payments made to Noteholders, including payments to certain exempt recipients (such as exempt organizations) and to certain foreign investors. Noteholders should consult their tax advisers as to their qualification for exemption from backup withholding and the procedure for obtaining the exemption.

State Income Tax Consequences

You should also consider the state income tax consequences of the acquisition, ownership, and disposition of the Notes. State income tax law may differ substantially from the corresponding federal law, and this discussion does not purport to describe any aspect of the income tax laws of any state. Therefore, you should consult your own tax advisors with respect to the various state tax consequences of an investment in the Notes.

INVESTMENTS BY QUALIFIED PLANS AND INDIVIDUAL RETIREMENT ACCOUNTS

In considering an investment in the Notes of any assets of a qualified plan, a fiduciary, taking into account the facts and circumstances of such qualified plan, should consider, among other things:

(1) whether the investment is in accordance with the documents and instruments governing such qualified plan;

(2) the definition of plan assets under ERISA ("Plan Assets");

(3) whether the investment satisfies the diversification requirements of Section 404(a)(1)(C) of ERISA;

(4) whether, under Section 404(a)(1)(B) of ERISA, the investment is prudent considering the nature of an investment in the Notes and the fact that there is not expected to be a market created in which the fiduciary can sell or otherwise dispose of the Notes;

(5) whether the Company, the Manager or any of their Affiliates is a fiduciary or a party in interest to the qualified plan; and

(6) whether an investment in Notes may cause the qualified plan to recognize UBTI.

With respect to item (6) above, the Company's management believes that the payment of interest to Noteholders pursuant to this Offering will not, standing alone, result in the recognition of UBTI by tax-exempt investors. The prudence of a particular investment must be determined by the responsible fiduciary (usually the trustee, plan administrator or investment manager) with respect to each qualified plan, taking into account all of the facts and circumstances of the investment.

ERISA provides that Notes may not be purchased by a qualified plan if the Company, the Manager or any of their Affiliates is a fiduciary or party in interest (as defined in Sections 3(21) and 3(14) of ERISA) to the plan unless such purchase is exempt from the prohibited transaction provisions of Section 406 of ERISA. Under ERISA, it is the responsibility of the fiduciary responsible for purchasing Notes not to engage in such transactions. Section 4975 of the Code has similar restrictions applicable to transactions between disqualified persons and qualified plans or

individual retirement accounts, which could result in the imposition of excise taxes on the Company, unless and until such a prohibited transaction is corrected.

In the case of an IRA, if the Company, the Manager or any of their Affiliates is a disqualified person with respect to the IRA, the purchase of Notes by the IRA could instead cause the entire value of the IRA to be taxable to the IRA sponsor.

Section 406 of ERISA and Code Section 4975 also prohibit qualified plans from engaging in certain transactions with specified parties involving Plan Assets. Code Section 4975 also prevents IRAs from engaging in such transactions. One of the transactions prohibited is the furnishing of services between a plan and a "party in interest" or a "disqualified person." Included in the definition of "party in interest" under Section 3(14) of ERISA and the definition of "disqualified person" in Code Section 4975(e)(2) are "persons providing services to the plan." If the Company, the Manager or certain entities and individuals related to them have previously provided services to a benefit plan investor, then the Company, or the Manager could be characterized as a "party in interest" under ERISA and/or a "disqualified person" under the Code with respect to such benefit plan investor. If such a relationship exists, it could be argued that the Affiliate of the Company, or the Manager is being compensated directly out of Plan Assets for the provision of services, i.e., establishment of the Offering and making it available as an investment to the qualified plan. If this were the case, absent a specific exemption applicable to the transaction, a prohibited transaction could be determined to have occurred between the qualified plan and the Affiliate of the Company, or the Manager.

Another type of transaction prohibited by ERISA and the Code is one in which fiduciaries of a qualified plan or the person who establishes an individual retirement account engage in self-dealing or in co-investment with the plan or account. Accordingly, Affiliates of the Company and the Manager are not permitted to purchase Notes with assets of any benefit plan investor if they: (a) have investment discretion with respect to such assets or (b) regularly give individualized investment advice which serves as the primary basis for the investment decisions made with respect to such assets. In addition, no fiduciary of a qualified plan or owner of an individual retirement account should purchase Notes both individually and with assets of the benefit plan investor.

With respect to an investing IRA, the tax-exempt status of the account could be lost if the investment constitutes a prohibited transaction under Code Section 408(e)(2) by reason of the Affiliate of the Company or the Manager engaging in the prohibited transaction with the IRA or the individual who established the IRA or his beneficiary. If the IRA were to lose its tax-exempt status, the entire value of the IRA would be considered to be distributed and taxable to the IRA sponsor.

REPORTS

The Company will furnish the following reports, statements, and tax information to each Noteholder:

Confirmation of Notes. Upon acceptance of the Subscription Agreement, each Noteholder will receive a confirmation of the amount of the denomination of his purchase. Although the Notes will be "book-entry" on the Note Register, Noteholders will receive a note evidencing the Company's indebtedness to the Noteholders.

Annual Report. Within 120 days after the end of each calendar year, the Company will send to each Noteholder of record during the previous year: (a) an audited balance sheet for the Company as of the end of such fiscal year and (b) an audited statement of the Company's earnings for such fiscal year, along with a year-end status report.

Tax Information. Within 60 days after the end of each fiscal year, the Company will send to each Noteholder such tax information as shall be necessary for the preparation of federal income tax returns and state income and other tax returns with regard to the applicable jurisdictions.

RATING

The Company will not request a rating from Standard and Poor's Corporation, Moody's Investor's Service, or any other or similar rating company. The Company believes that the benefits of a rating do not justify the costs associated with a rating for the Notes issued by a new company with no established operating history.

LITIGATION

There is no action, suit, or proceeding known to be pending or threatened restraining or enjoining the execution or delivery of the Notes or in any way contesting or affecting the validity of the Notes.

ADDITIONAL INFORMATION

The Company will answer inquiries from subscribers concerning the Notes, the Company and other matters relating to the offer and sale of Notes, and the Company will afford subscribers the opportunity to obtain any additional information to the extent the Company possesses such information or can acquire such information without unreasonable effort or expense that is necessary to verify the information in this Memorandum.

Subscribers are entitled to review copies of other material contracts relating to the Notes described in this Memorandum. In the Subscription Agreement, you will represent that you are completely satisfied with the results of your pre-investment due diligence activities.

GLOSSARY

The definitions of certain terms used in this Memorandum are set forth below:

"Accredited Investor" means, in addition to certain institutional investors, an investor who meets one of the following tests in which case such investor should qualify as an Accredited Investor:

(1) the investor is a natural person who had individual income in excess of **$200,000** in each of the two most recent years, or joint income with that person's spouse in excess of **$300,000** in each of these years, and has a reasonable expectation of reaching the same income level in the current year; or

(2) the investor is a natural person whose individual Net Worth, or joint Net Worth with that person's spouse, exceeds **$1,000,000** at the time of purchase of the Notes; or

(3) the investor is an organization described under Section 501(c)(3) of the Code, a corporation, Massachusetts or similar business trust or a partnership, not formed for the specific purpose of acquiring the Notes, with total assets in excess of **$5,000,000**; or

(4) the investor is an entity (including an Individual Retirement Account trust) in which each of the equity owners is an Accredited Investor as defined above in subparagraphs (1) and (2) above; or

(5) the investor is a trust with total assets in excess of **$5,000,000**, not formed for the specific purpose of acquiring the Notes, whose purchase is directed by a "sophisticated person" as defined in Rule 506(b)(2)(ii) of Regulation D under the Securities Act; or

(6) the investor is an employee benefit plan within the meaning of ERISA in which the investment decision is made by a plan fiduciary (as defined in Section 3(21) of ERISA) which is either a bank, savings and loan association, insurance company, or registered investment adviser; or the employee benefit plan has total assets in excess of **$5,000,000**; or it is a self-directed plan in which investment decisions are made solely by persons who are Accredited Investors.

"Affiliate(s)" means: (a) any person directly or indirectly controlling, controlled by or under common control with another person; (b) a person owning or controlling 10% or more of the outstanding voting securities of such other person; (c) any officer, director or partner of such other person; and (d) if such other person is an officer, director or partner, any company for which such person acts in any capacity. The term "person" shall include any natural person, corporation, partnership, trust, unincorporated association or other legal entity.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" means Clearwater 2008 Note Program, LLC, an Idaho limited liability company.

"Counsel" means Hirschler Fleischer, A Professional Corporation, located in Richmond, Virginia.

"DOL Regulations" means 29 C.F.R. Section 2510.3-101.

"ERISA" means the U.S. federal Employment Rights and Income Security Act, U.S.C. Title 29, Section 18.

"Escrow Agent" means a bank or other financial institutions that satisfies the requirements of Rule 15c2-4 promulgated under the Exchange Act, as the same is interpreted by FINRA from time to time.

"Event of Default" refers to the occurrence of any of the following: (a) failure to pay the principal on the Notes when due at maturity, or upon any earlier due date, or upon mandatory redemption at the option of Noteholder, (b) failure to pay any interest on the Notes for ten days after notice of such default to the Company; (c) failure to perform any other covenant for ten days after receipt of written notice specifying the default and requiring the Company to remedy such default; or (c) events of insolvency, receivership, conservatorship or reorganization of the Company.

"Exhibits" means the exhibits attached to this Memorandum and incorporated herein by this reference.

"FINRA" means the Financial Industry Regulatory Authority, Inc.

"Gross Proceeds" means the sum of all money raised by the Company through the sale of Notes pursuant to this Memorandum.

"IRA" means an Individual Retirement Account.

"IRS" means the Internal Revenue Service.

"Manager" refers to Clearwater REI, LLC. The Manager is sole owner and the initial manager of the Company. The term shall also refer to any successor or additional Manager, who is properly designated as a Manager.

"Managing Broker-Dealer" means Select Capital Corporation.

"Maximum Offering Amount" means $20,000,000 in aggregate principal amount of Notes, subject to increase to $40,000,000 at the sole discretion of the Company.

"Memorandum" means this Confidential Private Placement Memorandum and the Exhibits hereto dated August 29, 2008, as amended or supplemented, pursuant to which the Company is offering the Notes.

"Minimum Offering Amount" means $1,000,000.

"Noteholders" means purchasers of Notes.

"Notes" means the $20,000,000 aggregate principal amount of 9.0% notes due December 31, 2015, subject to increase to $40,000,000 at the sole discretion of the Company, which will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC; however, the Notes will not be secured by collateral.

"Note Register" means the records and documentation retained to track the ownership interest of the Notes.

"Offering" means the offering of Notes by the Company pursuant to the terms and conditions described in the Memorandum.

"Registrar" means the Company, which is responsible for keeping track of the Noteholders and maintaining the Note Register.

"RIA" refers to Registered Investment Advisers.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulation promulgated thereunder.

"Selling Group" means broker-dealers selected by the Company who are members of the FINRA and who offer and sell Notes on a "best efforts" basis.

"Treasury Regulations" means the United States Treasury Regulations promulgated pursuant to the Code.

"UBTI" means unrelated business taxable income.

INSTRUCTIONS TO INVESTORS

Clearwater 2008 Note Program, LLC
9.0% Notes Due December 31, 2015

Please read carefully the Private Placement Memorandum dated August 18, 2008 for the sale of $20,000,000 (subject to increase to $40,000,000) in aggregate principal amount of 9.0% Notes due December 31, 2015 ("Notes") issued by Clearwater 2008 Note Program, LLC, an Idaho limited liability company ("Company"), as supplemented from time to time, and all Exhibits thereto (collectively, the "Memorandum"), before deciding to subscribe. Capitalized terms not defined herein have the meanings set forth in the Memorandum.

Each prospective investor in Notes should examine the suitability of this type of investment in the context of his/her own needs, investment objectives and financial capabilities and should make his/her own independent investigation and decision as to suitability and as to the risk and potential gain involved. Also, each prospective investor in Notes is encouraged to consult with his/her attorney, accountant, financial consultant or other business or tax advisor regarding the risks and merits of the proposed investment.

This Offering is limited to investors who certify that they meet all of the qualifications set forth in the Memorandum for the purchase of Notes.

If you meet these qualifications and desire to purchase Notes, then please complete, execute and deliver the attached Subscription Agreement along with your check, payable to "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC" in the amount of the Subscription Payment.

Subscription Agreements and all attachments should be mailed or delivered to the Company at:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Don Steeves

All funds should be mailed, delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Don Steeves

Wire Instructions:
Account Number: 1001001602349
Routing/ABA Number: 324170140
Account Name: Clearwater 2008 Note Program, LLC

Upon receipt of this signed Subscription Agreement, verification of your investment qualifications and acceptance of your subscription by the Company (the Company reserves the right, in its sole discretion, to accept or reject a subscription for any or no reason whatsoever), the Company will notify you of receipt and acceptance of your subscription.

<u>Important Note</u>: **The person or entity actually making the decision to invest in Notes should complete and execute this Subscription Agreement. For example, retirement plans often hold certain investments in trust for their beneficiaries, but the beneficiaries may maintain investment control and discretion. In such a situation, the beneficiary with investment control must complete and execute this Subscription Agreement (this also applies to trusts, custodial accounts and similar arrangements).**

SUBSCRIPTION AGREEMENT

Clearwater 2008 Note Program, LLC
9.0% Notes Due December 31, 2015

This is the offer and agreement ("Subscription Agreement") of the undersigned to purchase $_____ ($50,000 minimum investment) in principal amount of 9.0% Notes due December 31, 2015 ("Notes") to be issued by Clearwater 2008 Note Program, LLC, an Idaho limited liability company (the "Company") ("Subscription Price"), subject to the terms, conditions, acknowledgments, representations and warranties stated herein and in the Confidential Private Placement Memorandum relating to the offer of up to $20,000,000 (subject to increase to $40,000,000) in aggregate principal amount in Notes dated August 29, 2008, as supplemented from time to time (the "Memorandum"). I am including with this Subscription Agreement a check payable to the order of "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC" in the amount of $_____, representing the Subscription Price for the Notes I am purchasing. All terms utilized herein shall have the same meaning as set forth in the Memorandum.

In order to induce the Company to accept this Subscription Agreement for Notes and as further consideration for such acceptance, I hereby make the following acknowledgments, representations and warranties with the full knowledge that the Company will expressly rely thereon in making a decision to accept or reject this Subscription Agreement:

1. I hereby adopt, confirm and agree to all of the covenants, representations and warranties set out in this Subscription Agreement.
2. My primary state of residence is: _____
3. My date of birth is: _____.
4. If I am a natural person, I hereby represent and warrant that (check as appropriate):
   (a) _____ I, together with my spouse, have a net worth, inclusive of home, home furnishings and personal automobiles, in excess of $1,000,000; or
   (b) _____ I have individual income in excess of $200,000, or joint income with my spouse, in excess of $300,000, in each of the two most recent years, and I reasonably expect individual or joint income in excess of that amount in the current year.
5. If other than a natural person, such entity represents and warrants that (check as appropriate):
   _____ it is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.
6. If other than a natural person, is such entity a benefit plan qualified under Code Section 401(a), a benefit plan subject to ERISA, an individual retirement account or arrangement under Code Section 408 or any other company sponsored employee benefit plan or program?
   _____ Yes. _____No.
7. Neither I nor any subsidiary, affiliate, owner, shareholder, partner, member, indemnitor, guarantor or related person or entity:
   (a) is a Sanctioned Person (as defined below);
   (b) has more than 15% of its assets in Sanctioned Countries (as defined below); or
   (c) derives more than 15% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries.

   For purposes of the foregoing, a "Sanctioned Person" shall mean (a) a person named on the list of "specially designated nationals" or "blocked persons" maintained by the U.S. Office of Foreign Assets Control ("*OFAC*") at *http://www.treas.gov/offices/eotffc/ofac/sdn/index.html*, or as otherwise published from time to time, or (b) (1) an agency of the government of a Sanctioned Country, (2) an organization controlled by a Sanctioned Country, or (3) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. A "Sanctioned Country" shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available at *http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html*, or as otherwise published from time to time.
8. Under penalties of perjury, I certify (a) that the number shown on this form is my correct taxpayer identification number and (b) that I am not subject to backup withholding, either because I have not been notified that I am subject to backup withholding as a result of a failure to report all

interest or dividends or the Internal Revenue Service has notified me that I am no longer subject to backup withholding. **(Please strike out the language certifying that you are not subject to backup withholding due to notified payee under-reporting if you have been notified that you are subject to backup withholding due to notified payee under-reporting, and you have not received a notice from the Internal Revenue Service advising you that backup withholding has terminated.)**

9. I further represent and warrant that such investment is not disproportionate to my income or available liquid funds and that I further have the capacity to protect my interests in connection with the purchase of the Notes.

10. I (we) wish to own my (our) Notes as follows (check one):

_____ (a) Separate or individual property. (In community property states, if the purchaser is married, his (her) spouse must submit written consent if community funds will be used to purchase the Notes.)

_____ (b) Husband and Wife as community property. (Community property states only. Husband and Wife should both sign all required documents unless advised by their attorney that one signature is sufficient.)

_____ (c) Joint Tenants with right of survivorship. (Both parties must sign all required documents unless advised by their attorneys that one signature is sufficient.)

_____ (d) Tenants in Common. (Both parties must sign all required documents.)

_____ (e) Trust. (Attach copy of trust instrument and include name of trust, name of trustee and date trust was formed.)

_____ (f) Partnership or Limited Liability Company. (Attach copy of articles or certificate, if any, and partnership agreement or operating agreement and include evidence of authority for person who executes required documents.)

_____ (g) Husband and Wife with right of survivorship. (Husband and wife should sign all documents unless other advised by their attorney.)

_____ (h) IRA or Qualified Plan:

_____

_____ (i) Other (indicate):

_____

_____

11. If the owner of Notes is an entity (trust, LLC, Partnership, etc.) my relationship to the owning entity is _____ (trustee, owner, partner, etc.)

Subscriber's Signature: X_____ Date: _____ ___, 200_

Subscriber's Signature: X_____ Date: _____ ___, 200_

1. I understand that in the event this Subscription Agreement is not accepted or, if accepted, the Offering is subsequently terminated or cancelled then the funds transmitted herewith shall be returned to the undersigned and this Subscription Agreement shall be terminated and of no further effect. RE Capital, LLC has agreed to guarantee the repayment of principal under the Notes. By executing this Subscription Agreement, each prospective investor of Notes approves the foregoing, acknowledges the risks described in the section of the Memorandum entitled "Risk Factors," and waives those provisions of the Securities Exchange Act of 1934, as amended, generally governing funds held in escrow prior to closing an offering.

2. I acknowledge that I have received, read and fully understand the Memorandum. I acknowledge that I am basing my decision to invest in Notes on the Memorandum and I have relied only on the information contained in said materials and have not relied upon any representations made by any other person. I recognize that an investment in Notes involves substantial risk and I am fully cognizant of and understand all of the risk factors related to the purchase of Notes, including, but not limited to, those risks set forth in the sections of the Memorandum entitled "Risk Factors."

3. My overall commitment to investments that are not readily marketable is not disproportionate to my individual net worth, and my investment in Notes will not cause such overall commitment to become excessive. I have adequate means of providing for my financial requirements, both current and anticipated, and have no need for liquidity in this investment. I can bear and am willing to accept the economic risk of losing my entire investment in Notes.

4. I acknowledge that the sale of Notes has not been accompanied by the publication of any advertisement, any general solicitation or as the direct result of an investment seminar sponsored by the Company or any of its Affiliates.

5. All information that I have provided to the Company herein concerning my suitability to invest in Notes is complete, accurate and correct as of the date of my signature on the last page of this Subscription Agreement. I hereby agree to notify the Company immediately of any material change in any such information occurring prior to the acceptance of this Subscription Agreement, including any information about changes concerning my net worth and financial position.

6. I have had the opportunity to ask questions of, and receive answers from, the Company and the Manager concerning the Company, the creation or operation of the Company or terms and conditions of the offering of Notes, and to obtain any additional information deemed necessary to verify the accuracy of the information contained in the Memorandum. I have been provided with all materials and information requested by either me or others representing me, including any information requested to verify any information furnished to me.

7. I am purchasing Notes for my own account and for investment purposes only and have no present intention, understanding or arrangement for the distribution, transfer, assignment, resale or subdivision of Notes. I understand that, due to the restrictions referred to in Paragraph 8 below, and the lack of any market existing or to exist for Notes, my investment in the Company will be highly illiquid and may have to be held indefinitely.

8. I am fully aware that Notes subscribed for hereunder have not been registered with the Securities and Exchange Commission in reliance on an exemption specified in Regulation D under the Securities Act of 1933, as amended, which reliance is based in part upon my representations set forth herein. I understand that Notes subscribed for herein have not been registered under applicable state securities laws and are being offered and sold pursuant to the exemptions specified in said laws, and unless they are registered, they may not be re-offered for sale or resold except in a transaction or as a security exempt under those laws. I further understand that the specific approval of such resales by the state securities administrator may be required in some states. **Notes have not been approved or disapproved by the United States Securities and Exchange Commission or other regulatory authority, nor have any of the foregoing authorities passed upon or endorsed the merits of this Offering or the accuracy or adequacy of the Memorandum. Any representation to the contrary is unlawful.**

9. I acknowledge that Home Federal Bank is acting solely as escrow holder in connection with the Offering of Notes, and makes no recommendations with respect thereto. I understand that Home Federal Bank has made no investigation regarding the Offering, Notes, the Company, the Manager, their Affiliates or their officers and directors, or any other person or entity involved in the Offering.

10. This Subscription Agreement shall be construed in accordance with and governed by the laws of the State of Idaho without regard to its choice of law provisions.

11. I hereby covenant and agree that any dispute, controversy or other claim arising under, out of or relating to this Agreement or any of the transactions contemplated hereby, or any amendment thereof, or the breach or interpretation hereof or thereof, shall be determined and settled in binding arbitration in Boise, Idaho, in accordance with applicable Idaho law, and with the rules and procedures of The American Arbitration Association. The prevailing party shall be entitled to an award of its reasonable costs and expenses, including, but not limited to, attorneys' fees, in addition to any other available remedies. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives, and judgment may be entered thereon in any court of competent jurisdiction. **BY EXECUTING THIS AGREEMENT, YOU ARE AGREEING TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE SUCH DISPUTES LITIGATED IN A COURT OR JURY TRIAL, AND YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE. BY EXECUTING THIS AGREEMENT, YOU HEREBY CONFIRM THAT YOUR AGREEMENTS TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

12. **I hereby agree to indemnify, defend and hold harmless the Company, the Manager, their Affiliates and all of their members, managers, shareholders, officers, employees, affiliates and advisors, from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that they may incur by reason of my failure to fulfill all of the terms and conditions of this Subscription Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished to any of the foregoing in connection with this transaction. This indemnification includes, but is not limited to, any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) incurred by the Company, the Manager, their Affiliates and any of their members, managers, shareholders, directors, officers, employees, affiliates or advisors, defending against any alleged violation of federal or state securities laws which is based upon or related to any untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished in connection with this transaction.**

13. I hereby acknowledge and agree that : (a) I may not transfer or assign this Subscription Agreement, or any interest herein, and any purported transfer shall be void; (b) except as specifically described herein, I am not entitled to cancel, terminate or revoke this Subscription Agreement and that this Subscription Agreement will be binding on my heirs, successors and personal representatives; provided, however, that if the Company rejects this Subscription Agreement, this Subscription Agreement shall be automatically canceled, terminated and revoked; (c) this Subscription Agreement and the Memorandum, together with all attachments and exhibits thereto, constitute the entire agreement among the parties hereto with respect to the sale of Notes and may be amended, modified or terminated only by a writing executed by all parties (except as provided herein with respect to rejection of this Subscription Agreement by the Company); (d) within two days after receipt of a written request from the Company, the undersigned agrees to provide such information and to execute and deliver such documents as may be

necessary to comply with any and all laws and regulations to which the Company is subject; and (e) the representations and warranties of the undersigned set forth herein shall survive the sale of Notes pursuant to this Subscription Agreement.

14. I am not making this investment in any manner as a representative of a charitable remainder unitrust or a charitable remainder trust.

Initial Here_____ Initial Here_____

[SIGNATURE PAGE FOLLOWS]

(SPECIAL INSTRUCTIONS: In all cases, the person/entity making the investment decision to purchase Notes must complete and sign the Subscription Agreement. For example, if the form of ownership designated above is a retirement plan for which investments are directed or made by a third party trustee, then that third party trustee must complete this Subscription Agreement rather than the beneficiaries under the retirement plan. Investors must list their principal place of residence rather than their office or other address on the signature page so that the Company can confirm compliance with appropriate securities laws. If you wish correspondence sent to some address other than your principal residence, please provide a mailing address in the blank provided below. Additionally, in an attempt to expedite the delivery of material information, the Company asks (but does not require) that you list a secondary contact source that may be able to reach you, if you are unavailable through any other reasonable means listed below.)

IN WITNESS WHEREOF, I (we) has executed this Subscription Agreement this ____ day of _____, 200__.

A. REGISTRATION INFORMATION or CUSTODIAN INFORMATION (if applicable)
Send ALL paperwork directly to the custodian

Please print the exact name (registration) investor desires on account:

_____

_____

Mailing address:_____

_____

E-mail address:_____

B. INVESTOR INFORMATION

Please send all investor correspondence to the following:

Name:_____

Address:_____

Investor Phone: Business (___)_____ Home: (___)_____

Investor Fax: Business (___)_____ Home: (___)_____

Primary State of Residence:_____

Social Security or Federal Tax ID Number:_____

C. SECONDARY CONTACT INFORMATION (OPTIONAL)

If the Company is unable to contact the Subscriber directly through any reasonable means provided by the Subscriber hereby, please contact the following individual who will be instructed by Subscriber to inform him/her that Subscriber should contact the Company as expeditiously as possible:

Secondary Contact Name:_____

Secondary Contact Address:_____

Secondary Contact Phone: Business (___)_____ Home: (___)_____

Secondary Contact Fax: Business (___)_____ Home: (___)_____

D. ELECTION TO PARTICIPATE IN INTEREST REINVESTMENT PROGRAM

If you wish to participate in the Interest Reinvestment Program, please initial here: _____

If you wish to receive monthly distributions of interest, please initial here: _____

You will have the opportunity twice annually (January 15th and July 15th) to change your election by giving written notice thereof to the Company not less than 30 days prior to the date on which the election may be changed.

D. SIGNATURES

THE UNDERSIGNED HAS THE AUTHORITY TO ENTER INTO THIS SUBSCRIPTION AGREEMENT ON BEHALF OF THE PERSON(S) OR ENTITY REGISTERED IN A. ABOVE.

Executed this ____ day of _____, 200_, at _____

X_____
Signature (Investor, or authorized signatory)

X_____
Signature (Investor, or authorized signatory)

E. SUBMIT SUBSCRIPTION

Mail the executed Subscription Agreement to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Don Steeves

The check (make payable to "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC") or funds should be wired, mailed or delivered to:

All funds should be delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Don Steeves

Wire Instructions:

Account Number: 1001001602349
Routing/ABA Number: 324170140
Account Name: Clearwater 2008 Note Program, LLC

Subscription Accepted:

Clearwater 2008 Note Program, LLC

By: Clearwater REI, LLC
an Idaho limited liability company
Its: Manager

By: _____ Date: _____
Name:
Its:

BROKER/DEALER REPRESENTATIONS AND WARRANTIES

Purchaser suitability requirements have been established by "Clearwater 2008 Note Program, LLC" (the "Project") and fully disclosed in its Private Placement Memorandum dated August 29, 2008 (the "Memorandum") under "Who May Invest." Before recommending purchase of membership interests in the Project being offered pursuant to the Memorandum (the "Interests"), we have reasonable grounds to believe, on the basis of information supplied by the subscriber concerning his, her or its investment objectives, other investments, financial situation and needs, and other pertinent information that: (i) the subscriber is an accredited investor as defined in Section 501(a) of Regulation D and meets the investor suitability requirements set forth in the Memorandum; (ii) the subscriber has a net worth and income sufficient to sustain the risks inherent in the Interests, including loss of investment and lack of liquidity; and (iii) the Interests are otherwise a suitable investment for the subscriber. We will maintain in our files documents disclosing the basis upon which the suitability of this subscriber was determined.

We verify that the above subscription either does not involve a discretionary account or, if so, that the subscriber's prior written approval was obtained relating to the liquidity and marketability of the Interests during the term of the purchase.

Broker/Dealer Firm Name_____

Registered Representative Name _____

Registered Representative's BRANCH ADDRESS_____
_____

Representative Phone Number_____
Representative Facsimile Number_____
Representative Email Address:_____

Broker/Dealer Firm BRANCH Phone Number:_____
Broker/Dealer Firm BRANCH Facsimile Number:_____

The Registered Representative Firm is licensed in the state in which the investor resides: Yes ____/No ____

_____
Registered Representative Signature

_____
Broker Dealer Authorized Principal

_____
Print Name

Balance Sheet of Clearwater 2008 Note Program, LLC
as of
December 31, 2008

Clearwater 2008 Note Program, LLC
Balance Sheet
as of 8/15/2008

ASSETS

CASH	$1,000

LIABILITIES AND SHAREHOLDER'S EQUITY

SHAREHOLDER'S EQUITY

Common stock - $1 par value; 100 shares authorized; 100 shares issued and outstanding	$100
Additional Paid-in Capital	$900
	$1,000

Balance Sheet of RE Capital Investments, LLC
as of
July 31, 2008

RE Capital Investments, LLC
Balance Sheet
As of July 31, 2008

	Jul 31, 08	
ASSETS		
Current Assets		
Checking/Savings		
Bank of America Checking - 357		3,144.28
Cash Reserve		250,000.00
US Bank		104,029.29
Total Checking/Savings		357,173.57
Total Current Assets		357,173.57
Fixed Assets		
Long Term Assets		
Investments - Partnerships	25,500,000.00	
Land Investments (net of 3rd pa	2,000,000.00	
Total Long Term Assets		27,500,000.00
Total Fixed Assets		27,500,000.00
Other Assets		
Investment		
CCS Trop-215, LLC	1,600,000.00	
Horseshoe Bend 400 (Program 1)	6,400,000.00	
ICP - Serene Meadows (20%)	1,600,000.00	
Idaho Partners (Baymont)	105,000.00	
New Meadows	6,400,000.00	
Sanger II	2,640,000.00	
Silver Mountain LLC (30%)	480,000.00	
Tres Rios Equity Partne (64.4%)	2,640,000.00	
WhiteCloud / New Meadow (62%)	1,984,000.00	
Total Investment		23,849,000.00
Note Receivables		
Clearwater - Bunker Hill	436,831.04	
Clearwater - MAC	73,500.00	
Clearwater Lodging		
Additional Capital Interest	25,000.00	
Initial Capital Interest	400,000.00	
Clearwater Lodging - Other	1,540,000.00	
Total Clearwater Lodging	1,965,000.00	
Clearwater REI LLC	458,763.00	
Cude-Barnett	80,000.00	
Heritage Lands LLC -Future Inte	342,357.96	
Horseshoe Bend - 3200 Acres	465,209.16	
Idaho Capital Partners LLC	250,000.00	
Sandpoint Condos	56,000.00	
Silver Mountain LLC	300,000.00	
Tres Rios Equity Partners	516,334.00	
Trop-215 Developer LLC	485,171.17	
Total Note Receivables		5,429,166.33
Total Other Assets		29,278,166.33
TOTAL ASSETS		**57,135,339.90**

RE Capital Investments, LLC
Balance Sheet
As of July 31, 2008

	Jul 31, 08	
LIABILITIES & EQUITY		
Liabilities		
Long Term Liabilities		
Notes Payable		
DH	300,000.00	
Diamond B Asset Management	568,650.19	
Heritage Lands LLC	2,375,000.00	
Interest Payable	46,763.00	
Terron Investments Inc.	569,000.00	
TH	300,000.00	
Total Notes Payable		4,159,413.19
Total Long Term Liabilities		4,159,413.19
Total Liabilities		4,159,413.19
Equity		
Land Equity		12,840,000.00
Partnership Equity		40,454,000.00
Retained Earnings		-314,176.01
Net Income		-3,897.28
Total Equity		52,975,926.71
TOTAL LIABILITIES & EQUITY		**57,135,339.90**

EXHIBIT D

Guaranty

In order to induce each prospective purchaser (each a "Noteholder" and collectively the "Noteholders") of 9.0% Notes due December 31, 2015 (each a "Note" and collectively the "Notes") issued by Clearwater 2008 Note Program, LLC (the "Company") to purchase the Notes, the Guarantor hereby unconditionally guarantees the payment of the original principal amount of the Notes as provided therein. This Guaranty shall remain in full force throughout the term of the Notes.

Guarantor hereby waives notice of acceptance of this Guaranty and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices to them of default by the Company under the Notes.

The Guarantor shall operate its business in a manner that, in light of its business judgment, maximizes its ability to perform its obligations under this Guaranty. The Guarantor's net worth will at all times during the term of the Guaranty be maintained at $54,000,000 subject to increase in pro rata up to $78,000,000 if the Company increases the offering amount of Notes.

Guarantor further agrees to the extent permitted by law, to pay any costs or expenses, including the reasonable fees of an attorney, incurred by the Noteholders in enforcing this Guaranty.

Guarantor acknowledges that the Noteholders may, by simple majority vote or consent, appoint one of them or a third-party attorney or agent, to prosecute the Noteholders' rights hereunder and such party shall be entitled to bring any suit, action or proceeding against the undersigned for the enforcement of any provision of this Guaranty on behalf of all Noteholders and it shall not be necessary in any such suit, action or proceeding to make each Noteholder a party thereto.

This Guaranty is not assignable, and shall be binding upon Guarantor, its legal representatives, permitted successors and assigns, and shall inure to the benefit of each Noteholder and its successors and assigns on a pro rata basis, calculated upon each Noteholder's share of the Notes. This Guaranty shall be governed by and construed and enforced in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed as follows:

RE Capital Investments, LLC

By: _____
Name: Diamond B Asset Management
Title: Managing Member
Date: July 31, 2008

No dealer, salesman or any other person has been authorized to give any information or to make any representations other than the information and representations contained in this Memorandum in connection with the offer made hereby, and, if given or made, such information and representations must not be relied upon as having been authorized by the Company. This Memorandum does not constitute an offer to sell, or a solicitation of an offer to buy, any of the Notes offered hereby to any person in any jurisdiction in which such offer or solicitation would be unlawful. Neither the delivery of this Memorandum nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Company since any of the dates as of which information is furnished herein or since the date hereof.

TABLE OF CONTENTS

1300 E State St. Ste 103 | Eagle, Idaho 83616 | 866.217.4906

CLEARWATER 2008 NOTE PROGRAM, LLC

$20,000,000
Maximum Offering Amount
(subject to increase to $40,000,000)

$1,000,000
Minimum Offering Amount

9.0% Notes Due December 31, 2015

$50,000
Minimum Investment Amount

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

August 29, 2008

SECOND SUPPLEMENT TO

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

CLEARWATER 2008 NOTE PROGRAM, LLC
$20,000,000 9.0% Notes
(Subject to increase to $40,000,000)

Minimum Investment: $50,000
Minimum Offering Amount: $1,000,000
Maximum Offering Amount: $20,000,000 (Subject to increase to $40,000,000)

Dated: June 30, 2009

This Second Supplement (the "Second Supplement") is designed to update, through June 30, 2009, the information previously provided in the Confidential Private Placement Memorandum dated August 29, 2008 (the "Memorandum"), which described the Offering by Clearwater 2008 Note Program, LLC (the "Company") of up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015, subject to increase to $40,000,000, and the First Supplement to the Memorandum dated October 3, 2008 (the "First Supplement") (as so supplemented, with all Exhibits to the Memorandum and the First Supplement, the "Offering Memorandum"). Capitalized terms used herein without definition shall have the meaning ascribed to them in the Offering Memorandum.

This Second Supplement is being furnished for your information on a confidential basis so that you may consider an investment in the Notes described in the Offering Memorandum and herein and should be read together with the Offering Memorandum. This Second Supplement is not to be reproduced or used for any other purpose. No person has been authorized to make any statement concerning the Offering other than as set forth in the Offering Memorandum and herein, and any such statement, if made, should not be relied upon. The Notes will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), or any other securities laws. Notes will be offered for investment purposes only pursuant to exemptions from the registration provisions provided under Regulation D of the Securities Act. There will be no public market for the Notes. There are significant risks associated with the Offering. See the Section entitled "Risk Factors" in the Offering Memorandum, as supplemented by this Second Supplement.

The Offering Memorandum, as supplemented by this Second Supplement, is not an offer to sell, or a solicitation of an offer to purchase Notes, and no Notes shall be offered or sold to any person in any jurisdiction in which such offer, solicitation, purchase or sale would be unlawful under the securities laws of such jurisdiction. The Offering Memorandum, as supplemented by this Second Supplement, has not been filed with the United States Securities and Exchange Commission ("SEC"), any securities administrator under state securities laws or any other governmental or self-regulatory authority. None of the SEC, any state securities administrators or governmental or self-regulatory authorities have passed on the merits of the Offering or the adequacy of the Offering Memorandum as supplemented by this Second Supplement. Any representation to the contrary is unlawful.

This Second Supplement describes updated information and should be read in its entirety by each investor.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

OFFERING MEMORANDUM

The following information described in the Offering Memorandum is hereby modified and supplemented as follows:

(a) The Balance Sheet of RE Capital Investments, LLC as of July 31, 2008 attached to the Memorandum as Exhibit C has been updated through December 31, 2008. The Balance Sheet of RE Capital Investments, LLC as of December 31, 2008 is attached to this Second Supplement as Exhibit A.

(b) As of the date of this Second Supplement, the Company has made three loans using proceeds of the Offering. Certain of the terms of those loans are as follows:

Property:	Florence Hospital	Legends 19	North Seattle Condos
Location:	Florence, AZ	Raymore, MO	Kenmore, WA
Loan Amount:	$6,160,000	$1,562,000	$3,745,740
Loan Date:	February 6, 2009	March 5, 2009	June 29, 2009
Appraised Value:	$10,995,000 (As Is)	$2,296,000	$8,000,000
Loan to Value (LTV)	56.03%	65.19%	46.82%
Interest Rate:	14%	14%	14%
Origination Fee:	4%	4%	4%
Term:	12 months	4 months	6 months

(c) The relationship of the Company, the Manager and RE Capital Investments, LLC to each other, and their respective owners, is as follows:

- RE Capital Investments, LLC owns 55.84% of Clearwater
  - Ronald D. Meyer owns 100% of Terron Investments, Inc., which owns 50% of RE Capital Investments, LLC
  - Christopher J. Benak owns 100% of Diamond B Asset Management, Inc., which owns the other 50% of RE Capital Investments, LLC
- Barton Cole Cochran owns 100% of Leap, Inc., which owns 19.58% of Clearwater
- Chad James Hansen owns 100% of Green Jacket Investments, Inc., which owns 19.58% of Clearwater
- A former employee of Clearwater owns the remaining 5% of Clearwater

(d) On September 4, 2008, an investor in several real estate development projects, including a project located in California and managed by Ronald Meyer, filed a complaint and statement of claim in arbitration in the Superior Court of the State of California against several individual and corporate defendants, including Mr. Meyer. The allegations in the complaint include claims of state law corporate securities fraud, breach of fiduciary duty, conversion, intentional misrepresentation, negligent misrepresentation and unfair business practices, among other claims, in connection with Mr. Meyer's involvement in, and alleged representations with respect to, certain real estate projects, as well as the activities of other defendants with respect to projects unrelated to Mr. Meyer. The claimant is seeking money damages, in addition to other remedies. Mr. Meyer and the other named defendants believe the lawsuit is without any merit and fully deny and are vigorously defending the claimant's allegations. Mr. Meyer believes that he will be successful in defending the lawsuit. The court has not made any ruling on the merits of the claimant's complaint.

(e) Bart Cochran, who was formerly the Company's Vice President of Acquisitions & Operations, is now the Company's President. Chad Hansen, who was formerly the Company's Vice President of Finance, is now the Company's Chief Financial Officer.

(f) The Offering Termination Date is hereby extended to December 31, 2009. The Manager reserves the right to further extend the Offering for an additional 12 months to December 31, 2010 in its sole discretion.

The information in this Second Supplement supersedes any information to the contrary provided in the Offering Memorandum.

SUPPLEMENTAL INFORMATION - The Private Placement Memorandum for the Offering of Notes consists of this sticker, the Memorandum dated August 29, 2008, the First Supplement to the Memorandum dated October 3, 2008 and this Second Supplement dated June 30, 2009, which supplements, modifies, and supersedes some of the information contained in the Memorandum and the First Supplement.

EXHIBIT A

Accrual Basis

RE Capital Investments, LLC
Balance Sheet
As of December 31, 2008

	Dec 31, 08	
ASSETS		
Current Assets		
Checking/Savings		
Bank of America Checking - 357		-1,950.66
Cash Reserve		250,000.00
US Bank		3,679.38
Total Checking/Savings		251,728.72
Total Current Assets		251,728.72
Fixed Assets		
Long Term Assets		
Investments - Partnerships	25,500,000.00	
Land Investments (net of 3rd pa	2,000,000.00	
Total Long Term Assets		27,500,000.00
Total Fixed Assets		27,500,000.00
Other Assets		
Investment		
CCS Trop-215, LLC	1,600,000.00	
Clearwater REI (Star)	3,375,000.00	
Horseshoe Bend 400 (Program 1)	6,400,000.00	
ICP - Serene Meadows (20%)	1,600,000.00	
Idaho Partners (Baymont)	105,000.00	
New Meadows	6,400,000.00	
Sanger II	2,640,000.00	
Silver Mountain LLC (30%)	480,000.00	
Tres Rios Equity Partne (64.4%)	2,640,000.00	
WhiteCloud / New Meadow (62%)	1,984,000.00	
Total Investment		27,224,000.00
Note Receivables		
Clearwater - Bunker Hill	436,831.04	
Clearwater - MAC	73,500.00	
Clearwater Lodging		
Additional Capital Interest	25,000.00	
Initial Capital Interest	400,000.00	
Clearwater Lodging - Other	1,540,000.00	
Total Clearwater Lodging	1,965,000.00	
Clearwater REI LLC	458,763.00	
Cude-Barnett	80,000.00	
Heritage Lands LLC -Future Inte	342,357.96	
Horseshoe Bend - 3200 Acres	465,209.16	
Idaho Capital Partners LLC	350,040.00	
Sandpoint Condos	56,000.00	
Silver Mountain LLC	300,000.00	
Tres Rios Equity Partners	516,334.00	
Trop-215 Developer LLC	485,171.17	
Total Note Receivables		5,529,206.33
Total Other Assets		32,753,206.33
TOTAL ASSETS		60,504,935.05
LIABILITIES & EQUITY		
Liabilities		
Long Term Liabilities		
Notes Payable		
Clearwater REI (Star)	2,335,000.00	

Accrual Basis

RE Capital Investments, LLC
Balance Sheet
As of December 31, 2008

	Dec 31, 08
DH	300,000.00
Diamond B Asset Management	434,650.19
Heritage Lands LLC	2,475,000.00
Interest Payable	46,763.00
Terron Investments Inc.	619,000.00
TH	300,000.00
Total Notes Payable	6,510,413.19
Total Long Term Liabilities	6,510,413.19
Total Liabilities	6,510,413.19
Equity	
Land Equity	12,840,000.00
Partnership Equity	41,494,000.00
Retained Earnings	-314,176.01
Net Income	-25,302.13
Total Equity	53,994,521.86
TOTAL LIABILITIES & EQUITY	60,504,935.05

FIRST SUPPLEMENT TO

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

CLEARWATER 2008 NOTE PROGRAM, LLC
$20,000,000 9.0% Notes
(Subject to increase to $40,000,000)

Minimum Investment: $50,000
Minimum Offering Amount: $1,000,000
Maximum Offering Amount: $20,000,000 (Subject to increase to $40,000,000)

Dated: October 3, 2008

This First Supplement (the "First Supplement") is designed to update, through October 3, 2008, the information previously provided in the Confidential Private Placement Memorandum dated August 29, 2008 (the "Memorandum"), which described the Offering by Clearwater 2008 Note Program, LLC (the "Company") of up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015, subject to increase to $40,000,000 (as so supplemented, with all Exhibits to the Memorandum and the Addendum, the "Offering Memorandum"). Capitalized terms used herein without definition shall have the meaning ascribed to them in the Offering Memorandum.

This First Supplement is being furnished for your information on a confidential basis so that you may consider an investment in the Notes described herein and in the Memorandum and should be read together with the Memorandum. This First Supplement is not to be reproduced or used for any other purpose. No person has been authorized to make any statement concerning the Offering other than as set forth in the Memorandum, and any such statement, if made, should not be relied upon. The Notes will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), or any other securities laws. Notes will be offered for investment purposes only pursuant to exemptions from the registration provisions provided under Regulation D of the Securities Act. There will be no public market for the Notes. There are significant risks associated with the Offering. See the Section entitled "Risk Factors" in the Memorandum, as supplemented by this First Supplement.

The Memorandum is not an offer to sell, or a solicitation of an offer to purchase, and no Notes shall be offered or sold to any person in any jurisdiction in which such offer, solicitation, purchase or sale would be unlawful under the securities laws of such jurisdiction. The Offering Memorandum has not been filed with the Securities and Exchange Commission, any securities administrator under state securities laws or any other governmental or self-regulatory authority. None of the SEC, any securities administrators or governmental or self-regulatory authority have passed on the merits of the Offering or the adequacy of the Offering Memorandum. Any representation to the contrary is unlawful.

This First Supplement describes updated information and should be read in its entirety by each investor.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

OFFERING MEMORANDUM

The following information described in the Offering Memorandum is hereby modified and supplemented as follows:

The Company will hold all proceeds of the Offering and all principal amounts repaid to the Company during the term of the program in a bank control account for the benefit of the Noteholders. Funds will be released from the bank control account only upon receipt by bank of approval of a loan from the Company's Investment Committee in accordance with the requirements described in the Memorandum, upon receipt of notice of demand for liquidation of a Noteholder's Note pursuant to the Memorandum, upon receipt of notice that the Company is exercising its right to prepay all or some portion of the Notes, upon receipt of notice that the Company is transferring the proceeds held in the bank control account from the bank to an alternative and more stable financial institution, or upon the maturity of the Notes.

The first paragraph on page 3 of the Memorandum is deleted in its entirety and is replaced with the following:

> This Memorandum contains a limited discussion of tax issues that may be associated with an investment in the Notes by a qualified plan, an IRA or other tax exempt entity. See "INVESTMENT BY QUALIFIED PLANS AND INDIVIDUAL RETIREMENT ACCOUNTS."

The Company intends to provide Noteholders with the information described in the section of the Memorandum entitled "Reports – Annual Report" within 60 days following the end of each calendar year. The Company will provide Noteholders with the information described in the section of the Memorandum entitled "Reports – Tax Information" within the time periods mandated for the delivery of such information by the relevant taxing authority (i.e., 1099s will be delivered not later than January 31). Any and all statements that are inconsistent with the foregoing, and in particular the statements to the contrary contained in the sections of the Memorandum entitled "Reports – Annual Report" and "Reports – Tax Information" are superseded hereby.

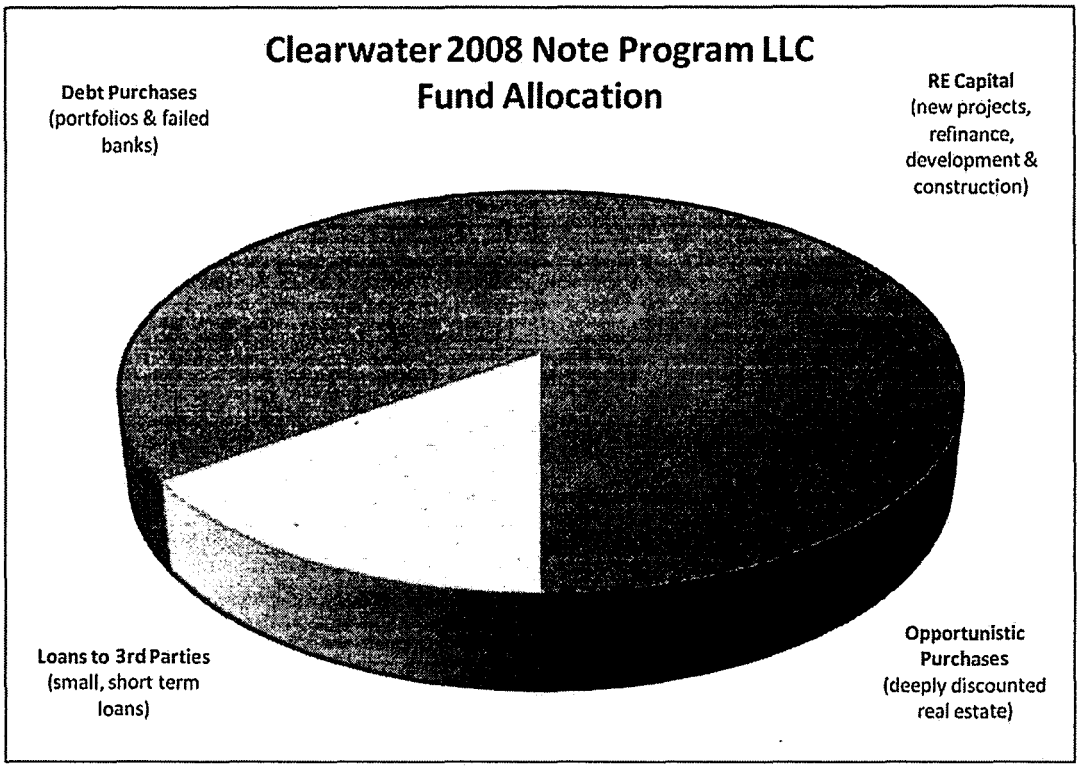
Peter Cooper, Senior Vice President of Sales will assume the role of Director of Sales and Broker Dealer Relations for Clearwater REI, LLC. Mr. Cooper has thirty years of experience in the securities industry and long-term relationships with key industry contacts. Don Steeves, former National Sales Director and Director of Broker Dealer Relations, concluded his employment with Clearwater REI, LLC and is pursuing other opportunities within the real estate and securities industry.

The section of the Memorandum entitled Business Plan is hereby deleted in its entirety and superseded by the following:

> The Clearwater 2008 Note Program, LLC was organized to offer 9% Notes due December 31, 2015, in an aggregate principal amount up to $20,000,000, which amount may be increased to $40,000,000 at the sole discretion of the Company. The net proceeds from the investment monies will be placed in a bank control account. The Company will use said proceeds from the offering of Notes to provide first mortgage financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. Such projects may include, without limitation, acquisition, entitlement, and development of, and construction on, undeveloped real property, and the purchase or refinance of existing real estate assets. It is anticipated that the average overall investment breakdown of the proceeds during the life of the program will be in the following ranges, subject to a combined cap of an average of 100%.
>
> Opportunistic Purchases:
> 30% - 50% will be lent to Affiliates to purchase undervalued real estate in today's current market. These opportunities will be purchased from banks' real estate holdings, distressed sellers, and large development portfolios. The Company is already being presented with numerous opportunities.
>
> Affiliate Loans (RE Capital):
> 10% - 20% into new projects or construction/development of existing affiliate projects. Note funds will not be used for the refinance of existing affiliate projects. Though we are proud of the projects that have been completed or are in the process of being completed, the Company commits that all funds raised in this program will be going to new projects or the construction/development of existing projects that the principals of the Company will invest in personally.

Loans to 3rd Parties:
10% - 20% of the 2008 note funds will be used to provide short term lending to 3rd Parties. These loans will be short in maturity and target diverse property types. Opportunities frequently arise with unrelated parties that own real estate projects that banks are unwilling to finance because of the current debt market. With this note program, the Company may make loans secured by such properties to 3rd parties.

Debt Purchases:
30% - 50% in debt purchases from portfolios, banks, and the FDIC. These loans will retain original borrowers, guarantors, terms and remain fully enforceable. The purchase of existing debt from institutions allows us to "cherry pick" performing and discounted face value loans from groups looking to sell such loans and remove them from their balance sheets. The current regulatory market has put immense pressure on local, regional, and national banks to sell off existing real estate mortgages to increase liquidity. Additionally, our relationship with large mortgage portfolio buyers and hedge funds allows us to select a handful of assets without being burdened with the mixed bag that usually is included in these mortgage sales. This opportunity also allows for the Company to diversify the note program holdings.



The Company's loans will be collateralized by a first position Mortgage or first Deed of Trust only. The Company expects that loans will be diversified around the country though most opportunities will be in the West since that is where the Company is headquartered.

Some attractive real estate investment opportunities require that the transaction be closed within a timeframe shorter than that typically required to secure bank or other forms of financing. The Company may use the proceeds from the offering of Notes to provide the capital required in lieu of bank or other financing. Following closing, the Company intends to put permanent debt or equity in place following the acquisition or development and/or the properties will be sold making the Company's note funds revolving.

Investment Committee
Each proposed loan will be evaluated by a four member Investment Committee. The four member Investment Committee now consists of current principal members of Clearwater REI, LLC, namely: Ron Meyer, Chris Benak, Bart Cochran and Chad Hansen. The Investment Committee will apply the criteria detailed below in making a decision about whether to fund any proposed loan. No loan will be made by the Company without the prior approval of the Investment Committee. See the "Management of the Company – The Manager – Investment Committee" section in the PPM.

Investment Criteria
In order to qualify for loans from the Company, each borrowing entity will be required to provide a loan request detailing its needs, and will be required to satisfy additional requirements.

The primary financial requirement is that the maximum loan to value, at the time that each loan is made, is no greater than the following:

- Pre-entitled land/raw ground – LTV not to exceed 65%
- Entitled land – LTV not to exceed 75%
- Construction and existing commercial or residential structures – LTV not to exceed 80%

The loan to value ratio will be defined by an MAI appraisal. In the absence of an MAI appraisal, the loan to value ratio will be evidenced by a broker's opinion of value or by the Company's determination of value through the utilization of industry acceptable valuation methods. Other requirements that must be met by each borrowing entity will be at the discretion of the Investment Committee. The loan will be secured as a first position Mortgage or first position Deed of Trust on real property.

Documentation Required
The Investment Committee will require, at a minimum, the following documentation:

- Borrower Financial Statements
- Budgets or Pro-forma
- Projections
- Operating Statements
- Title & Survey
- Phase I, environmental questionnaire, or soils report (Investment Committee's discretion)
- Appraisal or Opinion of Value (Investment Committee's discretion)

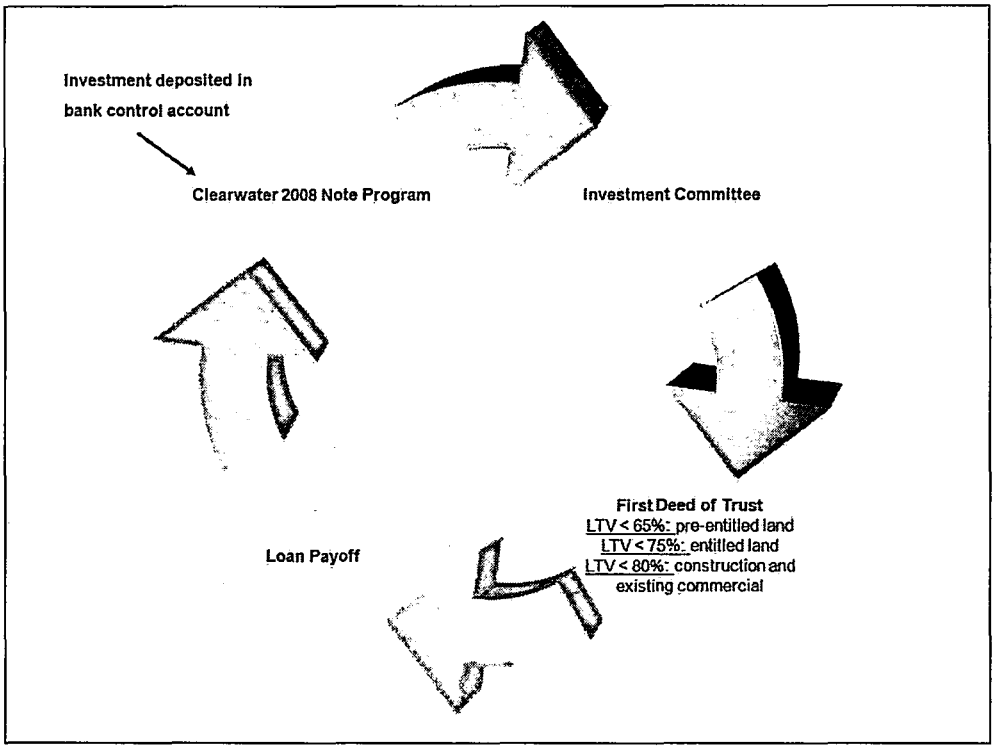
Construction & Development Lending
According to the Investment Criteria, construction and development lending will have a maximum of 80% loan to value. This metric is to be kept at all times during the construction process. An appraisal will be completed prior to the funding of the project to determine the "as completed" value of the property. Funds will be released only as the construction process moves forward - no funds will be pre-drawn.

Committed development funds will be held in an escrow account to be disbursed once the following has been completed:

- Draw request form has been completed
- Lien Waivers from all vendors have been executed
- Construction inspection has been made by Clearwater verifying draw request and percentage completion.

Loan Process & Life Cycle

The following chart depicts the life cycle of loans made by the Company.



The information in this First Supplement supersedes any information to the contrary provided in the Offering Memorandum.

SUPPLEMENTAL INFORMATION - The Private Placement Memorandum for the Offering of Notes consists of this sticker, the Memorandum dated August 29, 2008 and this First Supplement dated October 3, 2008, which supplements, modifies, and supersedes some of the information contained in the Memorandum.

#2207310 v4 033853.00025

EXHIBIT 4

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

February 01, 2010

RE: Clearwater 2008 Note Program, LLC (PPM Kit)

Dear Mark Boling:

Enclosed, please find the Private Placement Memorandum (PPM) for the ***Clearwater 2008 Note Program, LLC.***

The ***Clearwater 2008 Note Program*** offers investors predictable monthly income with an option to reinvest their interest thereby compounding their return. Some of the differences between the ***Clearwater 2008 Note Program*** and other fixed income type investments include but are not limited to the following:

- 9% Annual interest (paid monthly)
- All Note proceeds used to make loans are collateralized by First Mortgages/Deeds of Trust
- Guarantor: RE Capital Investments, LLC (120% net asset coverage on the Principal Only Corporate Guaranty)
- Annual audits by independent CPA firm
- Reinvestment Option (interest compounded monthly)
- Liquidity: Annually, limited to 10% of offering proceeds
- Suitable for Qualified Plans (No UBTI)
- Suitability: Accredited Investors Only

If you should have any questions or need assistance with the enclosed information, please feel free to contact your wholesale representative using the information provided below and they will gladly assist you.

Thanks for your consideration to Clearwater and we look forward to serving you and your valued clients.

Sincerely,
Clearwater Real Estate Investments

CLEARWATER
REAL ESTATE INVESTMENTS

Rob Ruebel
Regional Vice President of Sales

Office: 208.639.4493
Mobile: 208.407.5881
rob@clearwaterrei.com

Clearwater Real Estate Investments
1300 E State Street | Eagle, Idaho 83616
866.217.4906 | www.clearwaterrei.com

Clearwater 2008 Note Program

» Investment Summary

ACCREDITED INVESTORS ONLY

» Overview

The Clearwater 2008 Note Program, LLC (the "Company") primary business strategy is to use the net proceeds from the offering of the Notes to provide first mortgage financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. The Notes are backed by first liens and also include a corporate guaranty. As additional safeguards to preserve investor capital, this program is governed by strict guidelines set forth in the third party escrow control agreement and undergoes an annual audit by a reputable independent CPA firm.

TOTAL OFFERING [1]

$20,000,000

MINIMUM INVESTMENT [2]

$50,000

ANNUAL INTEREST RATE

9.0%

DISTRIBUTION PERIOD [3]

Monthly

MATURITY DATE [4]

12/31/2015

(1) Subject to increase to $40MM.
(2) Manager's Discretion (currently accepting $25,000)
(3) Reinvestment Option Available
(4) Annual Liquidity beginning December 31, 2010 (See PPM for details)

» Investment Highlights

- » 9% Annual interest (paid monthly)
- » All Note proceeds used to make loans are collateralized by First Mortgages/Deeds of Trust
- » Guarantor: RE Capital Investments, LLC (120% net asset coverage on the Principal Only Corporate Guaranty)
- » Annual audits by independent CPA firm
- » Reinvestment Option (interest compounded monthly)
- » Liquidity: Annually, limited to 10% of offering proceeds beginning 12/31/2010
- » Suitable for Qualified Plans (No UBTI)
- » Suitability: Accredited Investors Only

Manager

Clearwater Real Estate Investments has leveraged its relationship with its affiliates to access a portfolio of over $1 billion of commercial and residential projects located in California, Idaho, Nevada and Arizona. The Principals have over 20 years of real estate experience with a proven track record which includes raw land, entitlements, improvements, construction and sale of residential subdivisions, industrial, office, hotel, condo and master planned communities.

Clearwater's affiliates currently control over 544 thousand square feet in commercial real estate and have 264 residential and office condominium units, own and operate 3 hotels with 317 rooms and have a management contract with a resort and golf club.

In total, the Company and its affiliates have current projects in various stages of completion valued at approximately $410 million.

Clearwater Real Estate Investments
1300 E State Street | Eagle, Idaho 83616
866.217.4906 | www.clearwaterrei.com

Clearwat 2008 Note Program

» Investment Summary

ACCREDITED INVESTORS ONL

Interest Options

Option 1: Interest Payment Option [1]

Noteholders may elect to receive monthly interest payments at 9.0% simple interest on their principal investment.

Year	Annual Principal Amount	% Annual Simple Interest Rate	Annual Dollar Return	Cumulative Dollar Return
1	$100,000	9.00%	$9,000	$9,000
2	$100,000	9.00%	$9,000	$18,000
3	$100,000	9.00%	$9,000	$27,000
4	$100,000	9.00%	$9,000	$36,000
5	$100,000	9.00%	$9,000	$45,000
6	$100,000	9.00%	$9,000	$54,000
7	$100,000	9.00%	$9,000	$63,000
Avg Annual Return:		**9.00%**	**Total:**	**$63,000**

Option 2: Interest Reinvestment Plan [2]

Noteholders may elect to have interest reinvested and compounded monthly. Reinvested interest will begin to accrue interest as of its payment date and will be compounded at the annual rate of 9.0%.

Year	Annual Principal Amount	% Annual Compounded Interest Rate (3)	Annual $ Available for Reinvestment	Cumulative $ Amount Reinvested
1	$100,000	9.38%	$9,381	$9,381
2	$100,000	10.26%	$10,261	$19,641
3	$100,000	11.22%	$11,223	$30,865
4	$100,000	12.28%	$12,276	$43,141
5	$100,000	13.43%	$13,428	$56,568
6	$100,000	14.69%	$14,687	$71,255
7	$100,000	16.06%	$16,065	$87,320
Avg Annual Return:		**12.47%**	**Total:**	**$87,320**

To Achieve Projections Above:

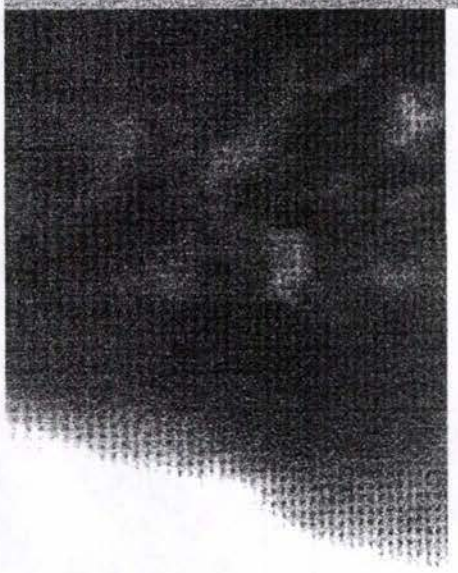
(1) Assumes investment is held for entire projected term. Interest rate of 9.0% is cumulative, non-compounding annual interest rate.
(2) Assumes investment is held for entire projected term. Compounded rate calculated as a percent return based on original investment amount and averaged over each additional year.
(3) Rate based on original investment and compounded monthly. Rate represents entire 12-month compounded annual return.

IMPORTANT DISCLAIMER:

The information contained herein is for informational purposes only about a potential investment that may or may not be offered at a later date pursuant to the terms of the Private Placement Memorandum. This material contains projections and assumptions based on current information and may change at a later date. This material does not constitute an offer to sell nor a solicitation to buy any security. Such offers can be made only by the Confidential Private Placement Memorandum. This material cannot and does not replace the Confidential Private Placement Memorandum. These investments involve a high degree of risk and are highly speculative; investors should refer to the "Risk Factors" of the Memorandum. There is no assurance or guarantee that the cash flow, profits, or capital of the Company will be sufficient to pay all interest and repay principal on the Notes.

RISK FACTORS:

- there is no certainty as to investment in Notes being profitable;
- underlying risks inherent to the individual real estate projects for which the proceeds are used, including the risks associated with residential and commercial development;
- risks of national, regional, and local economic downturn;
- the Notes are not a diversified investment; and
- there are various conflicts of interest among the Company, the Manager and their Affiliates.



Who We Are

What We Do

Experience

Benefits of Clearwater Real Estate Investments

This document does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Securities Offered Through Select Capital Corporation Member FINRA/SIPC. Select Capital Corporation 0514, 3070 Bristol Street, Suite 500, Costa Mesa, CA 92626.

Barton C. Cochran

Chad J. Hansen

Peter B. Cooper

Ronald D. Meyer

Christopher J. Benak

This document does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Securities Offered Through Select Capital Corporation, Member FINRA/SIPC. Select Capital Corporation OSJ: 3070 Bristol Street, Suite 500, Costa Mesa, CA 92626.

CLEARWATER REAL ESTATE INVESTMENTS

ACCREDITED INVESTORS ONLY

A Legacy of Success

In collaboration with our partners and affiliates, Clearwater Real Estate Investments has access to a premier portfolio of commercial and residential projects located in California, Idaho, Arizona, Utah, Kansas City, Missouri and Texas. Our products often lead the market through innovation and creativity. Our Principals have over 20 years of combined real estate experience with a focus on land acquisition, entitlement and development.

Clearwater's affiliates currently have access to industrial, retail and restaurants in various stages of entitlement, improvement, design, build, sale or lease. They also own and operate a number of residential and office condominium units and have management contracts with resort and golf clubs. Currently, they have more than 3,500 acres in the entitlement process for single family subdivision and master planned communities.

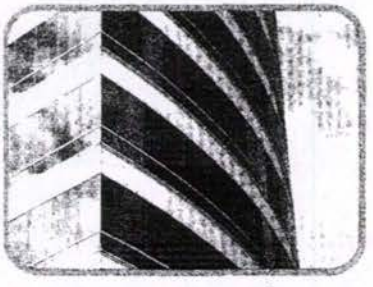
These affiliates have a proven track record of providing impressive returns to their investor clients on past projects and always seek to warrant the confidence and trust an investor places in them.

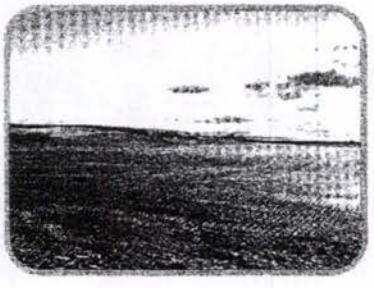
COMPLETED PROJECTS:

Project	Type	Location
Custom Home Projects 1-4	Custom Project	Los Altos, CA
Custom Home Projects 5-10	Custom Project	Morro Bay, CA
Villa Mira 1	Subdivision	Sanger, CA
Villa Mira 2	Subdivision	Sanger, CA
Villa Mira 3	Subdivision	Sanger, CA
Villa Mira 4	Subdivision	Sanger, CA
Vintage Square	PUD	Sanger, CA
Sanger Land	Unimproved Land	Sanger, CA
Sheridan Place	Subdivision	Meridian, ID
Sherwood Meadows	Subdivision	Nampa, ID
Buellton Industrial 1	Office/Industrial	Buellton, CA
Buellton Industrial 2	Office/Industrial	Buellton, CA
The Idaho Club	Resort/Golf	Coeur d'Alene, ID
Baymont Hotel	Hotel	Kellogg, ID

PROJECT HISTORY

Affiliate Partners Only





ACTIVE PROJECTS:

Project	Type	Location
Madera Ranch	Subdivision	Madera, CA
Ahwahnee Preserve	Equestrian, SFR	Ahwahnee, CA
Jade	Commercial Land	Meridian, ID
Hope Ridge Estates	Subdivision	Star, ID
Sundance Ranch Estates	Equestrian Community	Kuna, ID
Montour Valley Ranch 1	Subdivision	Horseshoe Bend, ID
Riverbend Estates	Subdivision	Horseshoe Bend, ID
Eagle Ridge Estates	Subdivision	Horseshoe Bend, ID
Horseshoe Bend	Commercial	Horseshoe Bend, ID
Horseshoe Bend	Master Plan Community	Horseshoe Bend, ID
Preserve Town Center	Commercial	Horseshoe Bend, ID
Sandpoint Condos	Condominiums	Sandpoint, ID
Bunker Hill Condominiums	Condominiums	Kellogg, ID
Woodsman Condo-Hotel	Condo, Hotel/Retail	McCall, ID
New Meadows Master Plan	Subdivision	New Meadows, ID
Greenfield Terrace	Equestrian Community	Boise, ID
Tres Rios Condos	Condominiums	Avondale, AZ
Tres Rios Retail	PADD	Avondale, AZ
Avondale Office Condos	Office Condos	Avondale, AZ
Glendale Commercial	Restaurants	Glendale, AZ
Bank Building	Bank	Avondale, AZ
Glendale Office Condos	Office Condos	Glendale, AZ
Office Building	Office	Glendale, AZ
Aloft Hotel "Starwood Product"	Hotel	Glendale, AZ
Radisson Hotel	Hotel	Glendale, AZ

This document does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Securities Offered Through Select Capital Corporation Member FINRA/SIPC. Select Capital Corporation OSJ: 3070 Bristol Street, Suite 500, Costa Mesa, CA 92626

CLEARWATER
REAL ESTATE INVESTMENTS

866.217.4906 toll-free | www.clearwaterrei.com

Our Social and Environmental Responsibility Commitment

"The confidence to believe that we can change the world... locally and globally."

This document does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Securities Offered Through Select Capital Corporation Member FINRA/SIPC. Select Capital Corporation (SSJ) 3070 Bristol Street, Suite 500, Costa Mesa, CA 92626

CLEARWATER
REAL ESTATE INVESTMENTS

866.217.4906 toll-free | www.clearwaterrei.com

EXHIBIT 5

PPM BOOK NUMBER
08Note-A238

INSTRUCTIONS TO INVESTORS

Clearwater 2008 Note Program, LLC
9.0% Notes Due December 31, 2015

Please read carefully the Private Placement Memorandum dated August 18, 2008 for the sale of $20,000,000 (subject to increase to $40,000,000) in aggregate principal amount of 9.0% Notes due December 31, 2015 ("Notes") issued by Clearwater 2008 Note Program, LLC, an Idaho limited liability company ("Company"), as supplemented from time to time, and all Exhibits thereto (collectively, the "Memorandum"), before deciding to subscribe. Capitalized terms not defined herein have the meanings set forth in the Memorandum.

Each prospective investor in Notes should examine the suitability of this type of investment in the context of his/her own needs, investment objectives and financial capabilities and should make his/her own independent investigation and decision as to suitability and as to the risk and potential gain involved. Also, each prospective investor in Notes is encouraged to consult with his/her attorney, accountant, financial consultant or other business or tax advisor regarding the risks and merits of the proposed investment.

This Offering is limited to investors who certify that they meet all of the qualifications set forth in the Memorandum for the purchase of Notes.

If you meet these qualifications and desire to purchase Notes, then please complete, execute and deliver the attached Subscription Agreement along with your check, payable to "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC" in the amount of the Subscription Payment.

Subscription Agreements and all attachments should be mailed or delivered to the Company at:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

All funds should be mailed, delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

Wire Instructions:
Account Number: [redacted]
Routing/ABA Number: [redacted]
Account Name: Clearwater 2008 Note Program, LLC

Upon receipt of this signed Subscription Agreement, verification of your investment qualifications and acceptance of your subscription by the Company (the Company reserves the right, in its sole discretion, to accept or reject a subscription for any or no reason whatsoever), the Company will notify you of receipt and acceptance of your subscription.

Important Note: **The person or entity actually making the decision to invest in Notes should complete and execute this Subscription Agreement. For example, retirement plans often hold certain investments in trust for their beneficiaries, but the beneficiaries may maintain investment control and discretion. In such a situation, the beneficiary with investment control must complete and execute this Subscription Agreement (this also applies to trusts, custodial accounts and similar arrangements).**

INTERNAL USE ONLY
Date Rec'd: 2/24/10
By: 2/24/10

SUBSCRIPTION AGREEMENT

Clearwater 2008 Note Program, LLC
9.0% Notes Due December 31, 2015

This is the offer and agreement ("Subscription Agreement") of the undersigned to purchase $50,000.00 ($50,000 minimum investment) in principal amount of 9.0% Notes due December 31, 2015 ("Notes") to be issued by Clearwater 2008 Note Program, LLC, an Idaho limited liability company (the "Company") ("Subscription Price"), subject to the terms, conditions, acknowledgments, representations and warranties stated herein and in the Confidential Private Placement Memorandum relating to the offer of up to $20,000,000 (subject to increase to $40,000,000) in aggregate principal amount in Notes dated August 29, 2008, as supplemented from time to time (the "Memorandum"). I am including with this Subscription Agreement a check payable to the order of "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC" in the amount of $50,000.00, representing the Subscription Price for the Notes I am purchasing. All terms utilized herein shall have the same meaning as set forth in the Memorandum.

In order to induce the Company to accept this Subscription Agreement for Notes and as further consideration for such acceptance, I hereby make the following acknowledgments, representations and warranties with the full knowledge that the Company will expressly rely thereon in making a decision to accept or reject this Subscription Agreement:

1. I hereby adopt, confirm and agree to all of the covenants, representations and warranties set out in this Subscription Agreement.
2. My primary state of residence is California
3. My date of birth is: [redacted].
4. If I am a natural person, I hereby represent and warrant that (check as appropriate):
   (a) _X_ I, together with my spouse, have a net worth, inclusive of home, home furnishings and personal automobiles, in excess of $1,000,000; or
   (b) _____ I have individual income in excess of $200,000, or joint income with my spouse, in excess of $300,000, in each of the two most recent years, and I reasonably expect individual or joint income in excess of that amount in the current year.
5. If other than a natural person, such entity represents and warrants that (check as appropriate):
   _____ it is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.
6. If other than a natural person, is such entity a benefit plan qualified under Code Section 401(a), a benefit plan subject to ERISA, an individual retirement account or arrangement under Code Section 408 or any other company sponsored employee benefit plan or program?
   _____ Yes. _____ No.
7. Neither I nor any subsidiary, affiliate, owner, shareholder, partner, member, indemnitor, guarantor or related person or entity:
   (a) is a Sanctioned Person (as defined below);
   (b) has more than 15% of its assets in Sanctioned Countries (as defined below); or
   (c) derives more than 15% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries.

   For purposes of the foregoing, a "Sanctioned Person" shall mean (a) a person named on the list of "specially designated nationals" or "blocked persons" maintained by the U.S. Office of Foreign Assets Control ("*OFAC*") at *http://www.treas.gov/offices/eotffc/ofac/sdn/index.html*, or as otherwise published from time to time, or (b) (1) an agency of the government of a Sanctioned Country, (2) an organization controlled by a Sanctioned Country, or (3) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. A "Sanctioned Country" shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available at *http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html*, or as otherwise published from time to time.
8. Under penalties of perjury, I certify (a) that the number shown on this form is my correct taxpayer identification number and (b) that I am not subject to backup withholding, either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends or the Internal Revenue Service has notified me that I am no longer subject to backup withholding. **(Please strike out the language certifying that you are not subject to backup withholding due to notified payee under-reporting if you have been notified that you are subject to backup withholding due to notified payee under-reporting, and you have not**

received a notice from the Internal Revenue Service advising you that backup withholding has terminated.)

9. I further represent and warrant that such investment is not disproportionate to my income or available liquid funds and that I further have the capacity to protect my interests in connection with the purchase of the Notes.

10. I (we) wish to own my (our) Notes as follows (check one):

X (a) Separate or individual property. (In community property states, if the purchaser is married, his (her) spouse must submit written consent if community funds will be used to purchase the Notes.)

____ (b) Husband and Wife as community property. (Community property states only. Husband and Wife should both sign all required documents unless advised by their attorney that one signature is sufficient.)

____ (c) Joint Tenants with right of survivorship. (Both parties must sign all required documents unless advised by their attorneys that one signature is sufficient.)

____ (d) Tenants in Common. (Both parties must sign all required documents.)

____ (e) Trust. (Attach copy of trust instrument and include name of trust, name of trustee and date trust was formed.)

____ (f) Partnership or Limited Liability Company. (Attach copy of articles or certificate, if any, and partnership agreement or operating agreement and include evidence of authority for person who executes required documents.)

____ (g) Husband and Wife with right of survivorship. (Husband and wife should sign all documents unless other advised by their attorney.)

____ (h) IRA or Qualified Plan: _____

____ (i) Other (indicate): _____

_____

_____

11. If the owner of Notes is an entity (trust, LLC, Partnership, etc.) my relationship to the owning entity is _____ (trustee, owner, partner, etc.)

Subscriber's Signature: X Mark Boling Date: 2/12/10

Subscriber's Signature: X _____ Date: _____

1. I understand that in the event this Subscription Agreement is not accepted or, if accepted, the Offering is subsequently terminated or cancelled then the funds transmitted herewith shall be returned to the undersigned and this Subscription Agreement shall be terminated and of no further effect. RE Capital, LLC has agreed to guarantee the repayment of principal under the Notes. By executing this Subscription Agreement, each prospective investor of Notes approves the foregoing, acknowledges the risks described in the section of the Memorandum entitled "Risk Factors," and waives those provisions of the Securities Exchange Act of 1934, as amended, generally governing funds held in escrow prior to closing an offering.

2. I acknowledge that I have received, read and fully understand the Memorandum. I acknowledge that I am basing my decision to invest in Notes on the Memorandum and I have relied only on the information contained in said materials and have not relied upon any representations made by any other person. I recognize that an investment in Notes involves substantial risk and I am fully cognizant of and understand all of the risk factors related to the purchase of Notes, including, but not limited to, those risks set forth in the sections of the Memorandum entitled "Risk Factors."

3. My overall commitment to investments that are not readily marketable is not disproportionate to my individual net worth, and my investment in Notes will not cause such overall commitment to become excessive. I have adequate means of providing for my financial requirements, both current and anticipated, and have no need for liquidity in this investment. I can bear and am willing to accept the economic risk of losing my entire investment in Notes.

4. I acknowledge that the sale of Notes has not been accompanied by the publication of any advertisement, any general solicitation or as the direct result of an investment seminar sponsored by the Company or any of its Affiliates.

5. All information that I have provided to the Company herein concerning my suitability to invest in Notes is complete, accurate and correct as of the date of my signature on the last page of this Subscription Agreement. I hereby agree to notify the Company immediately of any material change in any such information occurring prior to the acceptance of this Subscription Agreement, including any information about changes concerning my net worth and financial position.

6. I have had the opportunity to ask questions of, and receive answers from, the Company and the Manager concerning the Company, the creation or operation of the Company or terms and conditions of the offering of Notes, and to obtain any additional information deemed necessary to verify the accuracy of the information contained in the Memorandum. I have been

provided with all materials and information requested by either me or others representing me, including any information requested to verify any information furnished to me.

7. I am purchasing Notes for my own account and for investment purposes only and have no present intention, understanding or arrangement for the distribution, transfer, assignment, resale or subdivision of Notes. I understand that, due to the restrictions referred to in Paragraph 8 below, and the lack of any market existing or to exist for Notes, my investment in the Company will be highly illiquid and may have to be held indefinitely.

8. I am fully aware that Notes subscribed for hereunder have not been registered with the Securities and Exchange Commission in reliance on an exemption specified in Regulation D under the Securities Act of 1933, as amended, which reliance is based in part upon my representations set forth herein. I understand that Notes subscribed for herein have not been registered under applicable state securities laws and are being offered and sold pursuant to the exemptions specified in said laws, and unless they are registered, they may not be re-offered for sale or resold except in a transaction or as a security exempt under those laws. I further understand that the specific approval of such resales by the state securities administrator may be required in some states. **Notes have not been approved or disapproved by the United States Securities and Exchange Commission or other regulatory authority, nor have any of the foregoing authorities passed upon or endorsed the merits of this Offering or the accuracy or adequacy of the Memorandum. Any representation to the contrary is unlawful.**

9. I acknowledge that Home Federal Bank is acting solely as escrow holder in connection with the Offering of Notes, and makes no recommendations with respect thereto. I understand that Home Federal Bank has made no investigation regarding the Offering, Notes, the Company, the Manager, their Affiliates or their officers and directors, or any other person or entity involved in the Offering.

10. This Subscription Agreement shall be construed in accordance with and governed by the laws of the State of Idaho without regard to its choice of law provisions.

11. I hereby covenant and agree that any dispute, controversy or other claim arising under, out of or relating to this Agreement or any of the transactions contemplated hereby, or any amendment thereof, or the breach or interpretation hereof or thereof, shall be determined and settled in binding arbitration in Boise, Idaho, in accordance with applicable Idaho law, and with the rules and procedures of The American Arbitration Association. The prevailing party shall be entitled to an award of its reasonable costs and expenses, including, but not limited to, attorneys' fees, in addition to any other available remedies. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives, and judgment may be entered thereon in any court of competent jurisdiction. **BY EXECUTING THIS AGREEMENT, YOU ARE AGREEING TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE SUCH DISPUTES LITIGATED IN A COURT OR JURY TRIAL, AND YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE. BY EXECUTING THIS AGREEMENT, YOU HEREBY CONFIRM THAT YOUR AGREEMENTS TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

12. **I hereby agree to indemnify, defend and hold harmless the Company, the Manager, their Affiliates and all of their members, managers, shareholders, officers, employees, affiliates and advisors, from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that they may incur by reason of my failure to fulfill all of the terms and conditions of this Subscription Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished to any of the foregoing in connection with this transaction. This indemnification includes, but is not limited to, any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) incurred by the Company, the Manager, their Affiliates and any of their members, managers, shareholders, directors, officers, employees, affiliates or advisors, defending against any alleged violation of federal or state securities laws which is based upon or related to any untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished in connection with this transaction.**

13. I hereby acknowledge and agree that : (a) I may not transfer or assign this Subscription Agreement, or any interest herein, and any purported transfer shall be void; (b) except as specifically described herein, I am not entitled to cancel, terminate or revoke this Subscription Agreement and that this Subscription Agreement will be binding on my heirs, successors and personal representatives; provided, however, that if the Company rejects this Subscription Agreement, this Subscription Agreement shall be automatically canceled, terminated and revoked; (c) this Subscription Agreement and the Memorandum, together with all attachments and exhibits thereto, constitute the entire agreement among the parties hereto with respect to the sale of Notes and may be amended, modified or terminated only by a writing executed by all parties (except as provided herein with respect to rejection of this Subscription Agreement by the Company); (d) within two days after receipt of a written request from the Company, the undersigned agrees to provide such information and to execute and deliver such documents as may be necessary to comply with any and all laws and regulations to which the Company is subject; and (e) the representations and warranties of the undersigned set forth herein shall survive the sale of Notes pursuant to this Subscription Agreement.

14. I am not making this investment in any manner as a representative of a charitable remainder unitrust or a charitable remainder trust.

Initial Here_____ Initial Here_____

(SPECIAL INSTRUCTIONS: In all cases, the person/entity making the investment decision to purchase Notes must complete and sign the Subscription Agreement. For example, if the form of ownership designated above is a retirement plan for which investments are directed or made by a third party trustee, then that third party trustee must complete this Subscription Agreement rather than the beneficiaries under the retirement plan. Investors must list their principal place of residence rather than their office or other address on the signature page so that the Company can confirm compliance with appropriate securities laws. If you wish correspondence sent to some address other than your principal residence, please provide a mailing address in the blank provided below. Additionally, in an attempt to expedite the delivery of material information, the Company asks (but does not require) that you list a secondary contact source that may be able to reach you, if you are unavailable through any other reasonable means listed below.)

IN WITNESS WHEREOF, I (we) has executed this Subscription Agreement this 12 day of February, 2010.

A. REGISTRATION INFORMATION or CUSTODIAN INFORMATION (If applicable)
Send ALL paperwork directly to the custodian

Please print the exact name (registration) investor desires on account:

MARK Boling

Mailing address: 21986 Cayuga Lane
Lake Forest, CA 92630

E-mail address: maboling@earthlink.net

B. INVESTOR INFORMATION

Please send all investor correspondence to the following:

Name: MARK Boling

Address: 21986 Cayuga Lane, Lake Forest, CA 92630

Investor Phone: Business ([redacted]) Home: ([redacted])

Investor Fax: Business ([redacted]) Home: ([redacted])

Primary State of Residence: California

Social Security or Federal Tax ID Number: [redacted]

C. SECONDARY CONTACT INFORMATION (OPTIONAL)

If the Company is unable to contact the Subscriber directly through any reasonable means provided by the Subscriber hereby, please contact the following individual who will be instructed by Subscriber to inform him/her that Subscriber should contact the Company as expeditiously as possible:

Secondary Contact Name: Patricia Mocella

Secondary Contact Address: 21986 Cayuga Lane, Lake Forest, CA 92630

Secondary Contact Phone: Business (___) Home: ([redacted])

Secondary Contact Fax: Business (___) Home: ([redacted])

D. ELECTION TO PARTICIPATE IN INTEREST REINVESTMENT PROGRAM

If you wish to participate in the Interest Reinvestment Program, please initial here: _____

If you wish to receive monthly distributions of interest, please initial here: MB

You will have the opportunity once annually to change your election by giving written notice thereof to the Company no later than November 30th in the year prior to the election year.

E. SIGNATURES

THE UNDERSIGNED HAS THE AUTHORITY TO ENTER INTO THIS SUBSCRIPTION AGREEMENT ON BEHALF OF THE PERSON(S) OR ENTITY REGISTERED IN A. ABOVE.

Executed this 12 day of February, 2010, at Lake Forest, CA

X Mark Boling
Signature (Investor, or authorized signatory)

X _____
Signature (Investor, or authorized signatory)

F. SUBMIT SUBSCRIPTION

Mail the executed Subscription Agreement to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

The check (make payable to "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC") or funds should be wired, mailed or delivered to:

All funds should be delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

Wire Instructions:

Account Number: [redacted]
Routing/ABA Number: [redacted]
Account Name: Clearwater 2008 Note Program, LLC

Subscription Accepted:

Clearwater 2008 Note Program, LLC

By: Clearwater REI, LLC
an Idaho limited liability company
Its: Manager

By: _____ Date: 2/26/10

Name: Bart Cowan

Its: Mgr

EXHIBIT 6

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

March 1, 2010

To: Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

Re: **Clearwater 2008 Note Program, LLC**

Dear Valued Investor,

Thank you for choosing Clearwater Real Estate Investments (Clearwater) and allowing us to assist you with your investment goals. The purpose of this letter is to notify and confirm your subscription has been received and accepted. Please note your investment information below.

Investment Information

Owner:	Mark Boling
Offering Name:	Clearwater 2008 Note Program, LLC
Custodian Acct Number:	n/a
Certificate Number:	08-470
Principal Amount:	$ 50,000.00
Effective Date:	2/27/10

Account Statements
As a Clearwater client, you will receive regular updates of your account activity on account statements.

Also, please find the following documents to keep for your records:

1) Certificate
2) Instructions to Investors & Subscription Agreement (signed accepted copy)
3) Master Note (signed copy)

For your convenience, please find a Direct Deposit Request Form enclosed hereto. If you would like to receive your monthly distributions via ACH direct deposit, simply complete the form and attach a voided check and return as indicated on the form. *Note: If you have (i) elected to participate in the Interest Reinvestment Plan (IRP), (ii) already submitted a direct deposit request form or (iii) your investment involves a custodial account please ignore this form.*

Clearwater is dedicated to providing the highest level of service and seeks to always warrant the trust and confidence you have placed in us. Please call us toll-free at (866) 217-4906 or you can send us an email at InvestorServices@clearwaterrei.com for any questions/assistance regarding your investment(s) with us.

Sincerely,

Investor Services
Toll-free: (866) 217-4906
InvestorServices@clearwaterrei.com

Enclosure(s)

EXHIBIT 7

LITHO. IN U.S.A.
© 1998 GOES 33625
All Rights Reserved

CLEARWATER
REAL ESTATE INVESTMENTS

Certificate

CLEARWATER 2008 NOTE PROGRAM, LLC

Certificate No.	08-470	*Amount*	$ 50,000.00

Issued to Mark Boling

Effective Date 2/27/10

Custodian Account No. n/a

Bart Cochran, Manager

EXHIBIT 8

NOTICE: THIS NOTE HAS NOT BEEN REGISTERED PURSUANT TO ANY FEDERAL OR STATE SECURITIES LAW. THIS NOTE MAY NOT BE TRANSFERRED OR RESOLD, EXCEPT AS PERMITTED UNDER (A) THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM, AND (B) THE RESTRICTIONS OF SECTION 10 HEREOF.

NOTE

$20,000,000 (subject to increase to $40,000,000) August 29, 2008

FOR VALUABLE CONSIDERATION, the receipt, adequacy and sufficiency of which are hereby acknowledged, Clearwater 2008 Note Program, LLC, an Idaho limited liability company ("Maker"), promises to pay to the parties listed on Exhibit A attached hereto (the "Noteholders"), the aggregate principal amount of Twenty Million and 00/100 Dollars ($20,000,000) with the option to increase to Forty Million and 00/100 Dollars ($40,000,000), together with interest, late charges, costs and expenses, and all other amounts described below in accordance with the following terms and provisions:

Section 1. Definitions. Unless the context expressly or by necessary implication otherwise requires, (a) in addition to any terms defined elsewhere in this Note, the capitalized terms defined in this Section 1 shall, for the purposes of this Note, have the meanings set forth below and (b) except as otherwise defined or limited herein, terms defined in the Memorandum when used herein shall have the respective meanings assigned to them in the Memorandum.

"Funding Date" shall mean the date on which the proceeds from the Maker's sale of Notes to Note Holders are released from escrow as described in the Memorandum.

"Interest" shall mean, collectively, the per annum interest payable on the outstanding principal hereof under Section 2 hereof.

"Maturity Date" shall mean December 31, 2015.

"Memorandum" shall mean Maker's Confidential Private Placement Memorandum dated August 18, 2008, as amended or supplemented from time to time, relating to the offer and sale by the Maker of up to $20,000,000 of Notes (subject to increase to $40,000,000).

"Noteholder" shall mean any person or entity hereafter purchasing a Note in accordance with the Memorandum, subject to the provisions of the Transaction Documents applicable thereto, and any successor or assign thereof or other or entity acquiring an interest herein at any time.

"Transaction Documents" shall mean this Note, the Subscription Agreement and the Memorandum.

Section 2. Interest.

Section 2.1 Fixed Interest. Commencing on the date hereof and continuing until December 31, 2015, the outstanding principal hereunder shall bear interest at a fixed annual rate of 9.0%.

Section 2.2. Computation. Interest shall be computed on the basis of a year of 360 days prorated for the actual number of days occurring in the period for which such Interest is payable.

Section 3. Payments; Accrual. Commencing on the fifteenth day of the month next following the Funding Date and continuing on the fifteenth day of each month thereafter until the outstanding principal hereof is paid in full, Maker shall pay to, or accrue and compound for the benefit of, the Noteholders all unpaid Interest in an amount equal to the product of the principal amount hereunder and that fraction the numerator of which is a Noteholder's principal investment and the denominator of which is the principal amount hereunder. If not sooner paid, Maker shall pay the principal balance hereof in full on the Maturity Date, together with all unpaid accrued Interest. Maker shall make all payments of Interest, late charges, and principal to the Noteholders at their respective addresses on file with the Maker as of the day which is ten days prior to the due date of such payment, on or before the date when due, without notice, deduction or offset. All payments hereunder shall be made in lawful money of the United States of America.

Section 4. Prepayment. Maker shall have the right to prepay this Note at any time after December 31, 2011 without penalty or premium upon payment to the Noteholders of the outstanding principal balance of the Note and accrued unpaid Interest.

Section 5. Put Rights. Beginning December 31, 2010 and once annually thereafter, up to 10% of the original principal amount may be called by the Noteholders upon not less than 30 days written notice to the Maker.

Notwithstanding the foregoing, upon the death of a Noteholder, the personal representative of such Noteholder may call the Note of such Noteholder and will receive the principal amount of such note, plus all accrued but unpaid principal thereon by giving written notice to the Company not less than 6 months following the date of death of such Noteholder. Interest will be payable through the date of which the notice is received by the Company and all principal and interest will be paid by the Company not later than 30 days following receipt of such notice.

Section 6. Late Charges. Maker recognizes that a default by Maker in making, when due, any of the payments required under this Note will result in the Noteholders incurring additional expenses, including by way of illustration, additional expenses in connection with sending notices of default, loss to the Noteholders of the use of the money due, and frustration to the Noteholders in meeting their other financial commitments. If, for any reason, Maker fails to fully pay any installment of Interest or principal plus Interest when due under this Note, whether or not any notice that such payments are due and payable is given, the Noteholders shall be entitled to damages for the detriment caused thereby. Because it is extremely difficult and impractical to ascertain the extent of such damages, Maker therefore agrees that a late charge equal to 5% of each payment of Interest or principal that is not paid within 10 days after its due date is a reasonable estimate of the fair compensation for the loss and damages the Noteholders will suffer. Further, Maker hereby agrees that such amount shall be presumed to be the amount of damages sustained by Noteholders in such case, and such sum shall be added to amount then due and payable.

Section 7. Liability. This Note is an obligation of Maker solely, is not an obligation of any of Maker's members, managers, or affiliates, and is unsecured; however, the repayment of the principal amount here of is guaranteed pursuant to that certain Guaranty a copy of which is attached to the Memorandum.. The Noteholders shall look exclusively to Maker and not to any such member, manager, or affiliate or the assets thereof for satisfaction of all such obligations and shall not seek to enforce any deficiency for payment thereof against any such member or manager in any capacity whatsoever or seek to collect payment thereof directly from any such member or manager whatsoever.

Section 8. Events of Default and Remedies.

Section 8.1. Events of Default. Any of the following occurrences shall constitute an "Event of Default" under this Note:

(a) failure by Maker to make any payment of Interest on or principal of this Note on or before the twenty-fifth (25th) day of the month first becoming due in accordance with the terms of this Note, without any notice or demand for payment (a "Payment Default");

(b) occurrence of any breach or default (including a Payment Default) by Maker under this Note or any other Transaction Document, and the continuation of any such breach or default for thirty (30) days after written notice of such breach or default is given to Maker by the Noteholders ("Curable Default"); however, if such Curable Default is not reasonably susceptible of cure within thirty (30) days with the exercise of due diligence, then Maker shall have an additional period of time, not to exceed one hundred and twenty (120) days, to complete the cure without such breach or default constituting an Event of Default, provided Maker is diligently and in good faith pursuing a cure; or

(c) dissolution or termination of the existence of Maker, the commencement by Maker of a voluntary case under the federal bankruptcy laws, the entry of a decree or order for relief against Maker in an involuntary case under the federal bankruptcy laws, the appointment or the consent by Maker to the appointment of a receiver, trustee, or custodian of Maker or for Maker, or an assignment for the benefit of creditors by Maker.

Section 8.2. Remedies. Upon any Event of Default under this Note and the expiration of any applicable notice and cure periods:

(a) the entire unpaid principal balance hereof, any accrued but unpaid Interest, late charges, and all other amounts owing under this Note, shall, at the option of Noteholders, without further notice or demand of any kind to Maker or any other person, become immediately due and payable; and

(b) Noteholders shall have and may exercise any and all rights and remedies available at law, by statute, or in equity.

The remedies of the Noteholder, as provided in this Note, shall be cumulative and concurrent and may be exercised singularly, successively, or together, at the sole discretion of the Noteholders, as often as occasion therefor shall arise. No act of omission or commission of the Noteholders, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of any right, remedy, or recourse to collateral, such waiver or release to be effected only through a written document executed by the Noteholders. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of, any subsequent right, remedy, or recourse to collateral as to any subsequent event.

Section 9. Legal Limits. All agreements between Maker and the Noteholders are hereby expressly limited so that in no event whatsoever, whether by reason of deferment or under any agreement or by virtue of acceleration of maturity of the indebtedness evidenced hereby, or otherwise, shall the amount paid or agreed to be paid to the Noteholders, for the loan, use, forbearance or detention of the money to be loaned under this Note, including, but not limited to, any Interest due hereunder, or to compensate the Noteholders for damages to be suffered by reason of a late payment or default under this Note, exceed the maximum permissible under applicable law. If, for any reason, fulfillment of any

provisions of this Note, at the time performance of such provision shall be due, would result in exceeding the limit of validity prescribed by law, the obligations to be fulfilled shall be reduced to the limit of such validity. In the event any payment is made by Maker or received by the Noteholders which exceeds the limit of validity prescribed by law, as amended from time to time, such excess sum shall be credited as a payment of principal under this Note, unless Maker shall notify the Noteholders in writing that Maker elects to have such excess returned to it. This provision shall never be superseded or waived and shall control every other provision of all agreements between Maker and the Noteholders with respect to the loan memorialized by this Note.

Section 10. Transfers. No Noteholder shall have any right to assign, grant participations in, or otherwise transfer all or any part of this Note without the express prior written consent of Maker, which consent may be withheld in the sole discretion of Maker. Without limiting the generality of the preceding sentence, Maker may withhold consent to a proposed transfer unless Maker determines that such transfer is exempt from federal and state securities registration and that the transferee and transferor have satisfied all the other conditions, including by way of illustration, but not limitation, the following conditions, to the satisfaction of Maker:

(a) Such transferor and transferee shall execute an approved form of assignment and prepay all costs to be incurred by Maker in connection with such transfer, including attorneys' fees and costs.

(b) Such transferee shall execute a subscription agreement and purchaser questionnaire to verify that the proposed transferee satisfies the suitability requirements set forth in the "WHO MAY INVEST" section of the Memorandum, to represent that such proposed transferee has read the Memorandum, all subsequent reports of Maker and Maker's financial statements, and is aware of, and assumes the risks of, investing in the Notes as summarized in the "RISK FACTORS" section of the Memorandum.

(c) Maker shall have received, if Maker so requests, an opinion of legal counsel, satisfactory to Maker, in Maker's sole discretion, confirming that the proposed transfer is exempt from securities registration and the assignment is in proper legal form and enforceable against the proposed transferee.

An approved transferee shall take the place of the transferor on the effective date of the transfer, as determined by the Maker and, thereafter, the transferee shall be treated as a Noteholder and owner of the Note transferred for all purposes of this Note and the other Transaction Documents.

Section 11. Notices. All payments of Maker and any notice, report, or writing required or permitted to be given hereunder shall be in writing and shall be delivered in the manner set forth in the Memorandum.

Section 12. Waiver. Maker, for itself and for its successors, transferees, assigns, endorsers, and signers, hereby waives all valuation and appraisement privilege, presentment and demand for payment, protest, dishonor and notice of dishonor, bringing of suit, lack of diligence and delays in collection or enforcement of this Note and notice of the intention to accelerate, the release of any party liable and the release of any security for the debt, the taking of any additional security and any other indulgence or forbearance. This Note may be extended or renewed from time to time without in any way affecting or diminishing Maker's liability under this Note.

Section 13. Headings. The subject headings or titles of paragraphs or sections of this Note are included for purposes of convenience of reference only and shall not affect the meaning, construction, or effect of any of its provisions.

Section 14. Purpose of Loan. Maker hereby represents and warrants that the loan evidenced by this Note is for commercial, business, and investment use only, and Maker acknowledges that the Noteholders are relying upon this representation and warranty in making the loan evidenced by this Note.

Section 15. Governing Law and Severability. This Note is made pursuant to, and shall be construed and governed by, the laws of the State of Idaho, and all rules and regulations promulgated thereunder, excluding the conflicts of laws provisions thereof. If any provision of this Note is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such construction or interpretation shall affect only those provisions so construed or interpreted and shall not affect the remaining provisions of this Note.

Section 16. Jury Trial; Jurisdiction; Venue. Jurisdiction and venue for, and waiver of jury trial in respect of, any action, suit or other proceeding arising out of, under or in connection with this Note or any other Transaction Document or any course of conduct, course of dealing, statements (verbal or written) or action of any party thereto, whether in connection with any Transaction Document or the making of the loan evidenced by this Note, or otherwise are controlled by the appropriate laws of the State of Idaho.

IN WITNESS WHEREOF, this Note has been duly executed and delivered by Maker as of the first date set forth above.

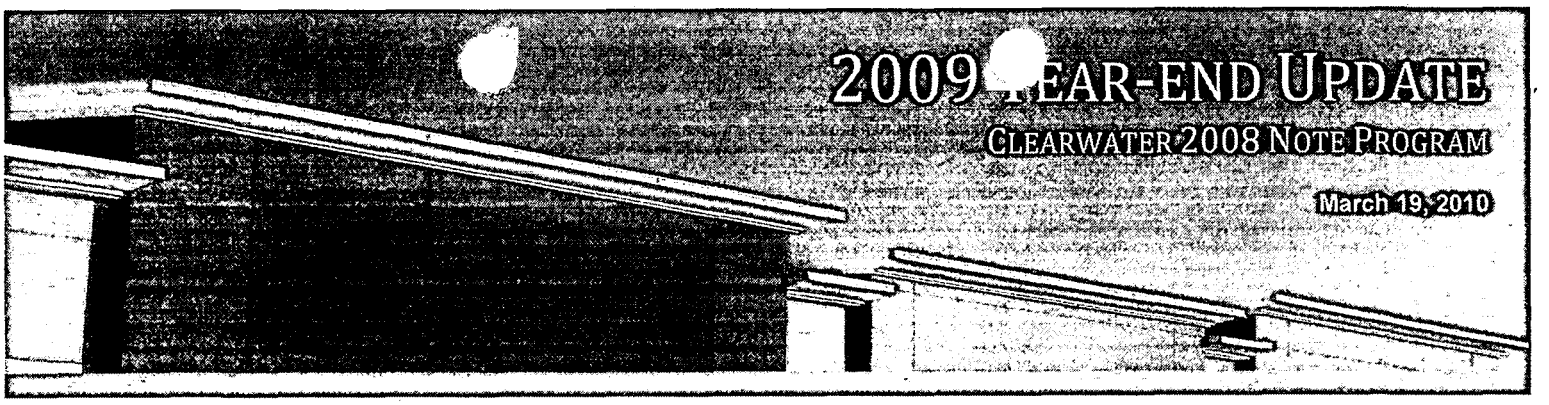
MAKER: **CLEARWATER 2008 NOTE PROGRAM, LLC**

By: Clearwater REI, LLC
Its: Sole Member

By: _____
Bart Cochran, Manager

#2116008 v2 033853.00025

EXHIBIT 9



Dear Investors:

The purpose of this letter is to keep you informed about the status of the 2008 9% Note Program (the "Note Program"). 2009 was a very difficult year for most companies across the globe including Clearwater. The current economic environment is requiring that we be nimble and creative in order to preserve investor capital and drive above average returns. The 2008 Note Program has made adjustments to the take out plan for a few of the loans as a result of the current economic environment. As of 12/31/09, $19,075,410 has been raised from investors and $17,700,000 has been deployed into five portfolio loans that have in excess of $34,000,000 collateralized by First Deeds of Trust. (Please refer to your fourth quarter statement previously sent)

It should be noted that as the financial crisis continues to work itself out, Clearwater is seeing more and more attractive opportunities for the Note Program in arenas such as distressed debt. These opportunities will provide the Note Program with significant profit potential and allow us to continue to make profitable investments with the note proceeds. The discussion below outlines our analysis of each of the five portfolio loans.

Healthcare of Florence

(Non Affiliate loan)

Description: This loan is secured by a First Deed of Trust (FDOT) on a 90,000 SF general hospital and long term care facility. The facility is located in one of the most underserved healthcare markets in the nation.

Original Takeout Plan: Upon completion of the renovations, the loan would be paid off through a refinance with an outside lender.

Update: Renovations are currently ongoing with an estimated completion date in the first half of 2010, 75% completion walkthroughs have been completed. During the renovation process the borrower encountered some cost overruns and delays and it was determined that some additional upgrades should be made for the environmental sustainability and operational efficiencies of the building. Due to these upgrades we have extended the loan amount by $2,000,000 and the term for six months to allow for the additional construction time needed. This extension also provides the loan the ability to be extended for up to five years assuming no default by the borrower. Clearwater feels very comfortable with the extension because of the abundance of collateral the Note Program has with this loan, the appraisal was updated as of 12/31/09 and it shows an "as-is" value of $16,400,000 (49.8% LTV) a "value at completion" of $23,285,000 (35% LTV) and a value as a "going concern" of $39,595,000 (20.6% LTV)

Current Strategy: Our strategy for this loan has not materially changed since origination. Timelines have been pushed back and costs have marginally increased but this is to be expected with a renovation project of this scope and scale. Clearwater, along with the borrower, continue to work with potential bridge lenders (immediate takeout) and permanent lenders (takeout at completion once operating). Due to this project's extremely attractive collateral position, property type (healthcare), and market, we are working with several interested lenders and expect to be refinanced out of this loan before the end of the term and current interest reserve.

If for some unforeseen circumstances the refinance does not become available, the hospital is expected to be able to service the Note Program's loan until the credit markets recover.

Investors should understand that due to conservative underwriting they remain in a secure position even in this extremely difficult economic climate, and that Clearwater is taking all necessary steps to have the loan repaid in a way that continues to allow the Clearwater 2008 Note Program meet its obligation to its investors.

North Seattle Condos

(Affiliate loan)

Description: This loan is secured by a FDOT on 33 condominium units located in Kenmore, WA (Seattle).

Original Takeout Plan: Clearwater originally purchased this loan at a distressed debt auction for a significant discount. The note was non-performing at the time and because of the large amount of equity in the deal ($8,000,000 "as-is" appraised value at closing) Clearwater's business plan was to foreclose on the property and liquidate the assets, secure a work out with the borrower or have the debt repaid.

Update: Even during these extremely difficult economic times units continue to sell, eight units have sold since we acquired the note and the net proceeds are averaging in excess of $200,000 per unit. In addition there are currently four units under contract.

Current Strategy: Clearwater is currently working with its local counsel to remove the property from the bankruptcy court jurisdiction, if successful, Clearwater will be able to proceed with the foreclosure sale as planned.

If able to proceed to foreclosure, there are two possible outcomes. Each of these potential outcomes has varying degrees of profitability for Clearwater; however, they all align with the preservation of the Note Program's capital.

Legends 19 - Townhomes
Raymore, MO
(Non affiliate loan)

Description: This loan is secured by a FDOT on 18 Townhomes in Raymore, MO (Kansas City).

Original Takeout Plan: Primary, refinance through a traditional lender, secondary, foreclosure and liquidation.

Update: Due to the deepening credit crisis the borrower was unable to refinance the property. Clearwater is currently going through the foreclosure process with the sale scheduled for the first week of May pending court approval. Rents are being collected by the court and placed in a lock box; rents will be available to the Note Program once the foreclosure is finalized.

Current Strategy: Clearwater is proceeding with the foreclosure; upon the foreclosure, the Note Program anticipates collecting all back rents and a bond posted by the borrower in the amount of $150,000. Clearwater will continue to collect rents and begin liquidating townhomes. A unit sold for $131,500 in October of 2009 (equates to an extrapolated gross sales proceeds of $2,498,500), the Note Program can expect that this loan should remain profitable due to the continued cash flow and collateral position of this asset.

Coastal Gables - (1) Horizontal Loan; (2) Vertical Loan
Bay St. Louis, MS
(Non affiliate loan)

Description:
(1) Horizontal Loan - This loan is secured by a FDOT on a 143 lot, 286 unit duplex community located in Bay St. Louis, Mississippi. Proceeds will be used for horizontal development.
(2) Vertical Loan - This loan is secured by a FDOT on phase one (consisting of 18 buildings and 36 units) of a 142 building, 284 unit duplex community located in Bay St. Louis, Mississippi which is part of the Biloxi-Gulfport MSA.

Original Takeout Plan:
(1) Horizontal Loan - Lot releases upon commencement of vertical construction.
(2) Vertical Loan - Sales of individual units to investors looking to take advantage of numerous available incentives, and a strong housing market, in the GO Zone.

Update: There have been some delays in the entitlement process; however, all entitlement and permitting should be officially completed shortly (greatly adding to the collateral's value) and construction will commence in earnest. The project is estimated to be 13% complete at this point.

Current Strategy: Clearwater's strategy has not changed materially from when this loan was originated. The entitlement delays are frustrating but do not materially affect the viability of the project or the performance of the Note Program's loan. Clearwater is lending its extensive development and entitlement expertise to this project and assisting in/monitoring the borrower's progress. Clearwater is confident that all delays are soon to be overcome and the project is expected to be back on schedule shortly. Investors remain interested in purchasing finished units and will be purchasing units as soon as they become available.

Current Liquidity - $750,000

In addition to the assets presented above the Note Program has approximately $750,000 in liquid assets that are ready to deploy. The continuing turmoil the real estate and credit markets has presented Clearwater with increasingly attractive investment opportunities into which Clearwater will be able to deploy these funds at very attractive risk adjusted rates of return.

As traditional credit sources have dried up we are finding credit worthy borrowers and assets that are good candidates for Note Program funds. Additionally, as banks experience increased regulatory pressure we are beginning to see an opportunity to purchase distressed debt at levels that are beginning to make sense in today's environment.

Again, Clearwater remains optimistic that the work out strategies presented above will allow the 2008 Note Program to meet its obligations to its investors. In summary, we at Clearwater feel that, in spite of the economic problems, we are on top of each of our investments in the 2008 Note Program and continue to meet all obligations to investors. The collateral coverage of underlying loans and the assets of RE Capital, the guarantor, are being maintained at sufficient levels to allow us to meet our obligations. Please contact our Investor Services Department, if you have any questions.

Sincerely,

Clearwater Real Estate Investments

This document does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum to Accredited Investors. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

EXHIBIT 10

CLEARWATER 2008 NOTE PROGRAM, LLC

INDEPENDENT AUDITOR'S REPORT AND FINANCIAL STATEMENTS

DECEMBER 31, 2009 AND 2008

TABLE OF CONTENTS

INDEPENDENT AUDITOR'S REPORT

To the Members
Clearwater 2008 Note Program, LLC
Eagle, Idaho

We have audited the accompanying balance sheet of Clearwater 2008 Note Program, LLC (the Company) as of December 31, 2009, and the related statements of operations, member's equity (deficit), and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit. The financial statements of Clearwater 2008 Note Program, LLC as of December 31, 2008, were audited by other auditors whose report dated April 6, 2009, expressed an unqualified opinion on those statements.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Clearwater 2008 Note Program, LLC as of December 31, 2009, and the results of its operations and its cash flows for the period then ended in conformity with accounting principles generally accepted in the United States of America.

Moss Adams LLP

Spokane, Washington
June 17, 2010

CLEARWATER 200o NOTE PROGRAM, LLC
BALANCE SHEET

ASSETS

	December 31, 2009	2008
CURRENT ASSETS		
Cash	**$ 1,261,964**	$ 4,539,915
Interest receivable	**42,699**	-
Real estate loans receivable	**15,641,771**	-
Current portion of related party receivables	**535,576**	-
Total current assets	**17,482,010**	4,539,915
OTHER ASSETS		
Related party receivables, long-term	**73,799**	-
Deferred loan costs, net	**1,710,569**	513,771
	$ 19,266,378	$ 5,053,686

LIABILITIES AND MEMBER'S DEFICIT

CURRENT LIABILITIES		
Accrued interest payable	**$ 109,157**	$ 62,010
Unearned interest income reserves	**664,155**	-
Current portion of notes payable	**1,907,541**	-
Total current liabilities	**2,680,853**	62,010
LONG-TERM DEBT		
Notes payable, less current portion	**17,405,780**	5,160,427
Related party payable	**-**	41,263
	20,086,633	5,263,700
MEMBER'S DEFICIT		
Membership units	**1,000**	1,000
Membership units subscription receivable	**(1,000)**	(1,000)
Member's deficit	**(820,255)**	(210,014)
	(820,255)	(210,014)
	$ 19,266,378	$ 5,053,686

See accompanying notes.

CLEARWATER 2008 NOTE PROGRAM, LLC
STATEMENT OF OPERATIONS

	Year Ended December 31,	
	2009	2008
REVENUE		
Real estate loan interest	**$ 846,313**	$ -
Other interest	**81,562**	14,561
	927,875	14,561
EXPENSES		
Interest	**1,207,864**	88,454
Marketing	**149,783**	91,748
General and administrative	**180,469**	44,373
	1,538,116	224,575
NET LOSS	**$ (610,241)**	$ (210,014)

See accompanying notes.

CLEARWATER 2008 NOTE PROGRAM, LLC
STATEMENT OF MEMBER'S EQUITY (DEFICIT)

	Membership Units	Membership Units Subscriptions Receivable	Member's Deficit	Total
Balance, January 1, 2008	$ -	$ -	$ -	$ -
Owner contribution	1,000	(1,000)	-	-
Net loss	-	-	(210,014)	(210,014)
Balance, December 31, 2008	1,000	(1,000)	(210,014)	(210,014)
Net loss	-	-	**(610,241)**	**(610,241)**
Balance, December 31, 2009	**$ 1,000**	**$ (1,000)**	**$ (820,255)**	**$ (820,255)**

See accompanying notes

	Year Ended December 31,	
	2009	2008
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	**$ (610,241)**	$ (210,014)
Adjustments to reconcile net loss to net cash used by operating activities:		
Amortization of deferred loan costs.(included as interest expense)	**158,627**	8,735
Reinvested interest expense	**220,369**	17,709
Changes in assets and liabilities		
Interest receivable	**(42,699)**	-
Related party receivables	**(609,375)**	41,263
Deferred loan costs	**(1,355,425)**	-
Accrued interest payable	**47,147**	62,010
Unearned interest income reserves	**664,155**	-
Related party payable	**(41,263)**	-
Net cash used by operating activities	**(1,568,705)**	(80,297)
CASH FLOWS FROM INVESTING ACTIVITIES		
Real estate loans funded	**(14,203,271)**	-
Purchase of real estate loan	**(1,525,000)**	-
Principal payments received on real estate loans receivable	**86,500**	-
Net cash used by investing activities	**(15,641,771)**	-
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from notes payable	**13,932,525**	4,620,212
NET CHANGE IN CASH	**(3,277,951)**	4,539,915
Cash, beginning of year	**4,539,915**	-
Cash, end of year	**$ 1,261,964**	$ 4,539,915
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Interest paid	**$ 781,721**	$ -
NONCASH INVESTING AND FINANCING ACTIVITIES		
Reinvested interest on notes payable	**$ 220,369**	$ 17,709

See accompanying notes.

Note 1 - Organization and Summary of Significant Accounting Policies

Organization:
Clearwater 2008 Note Program, LLC (the Company), formed August 8, 2008, is solely owned by Clearwater REI, LLC. The Company acquires and holds interests in acquisition and development loans, secured by real property, that are undertaken by affiliates of Clearwater REI, LLC, and other borrowers who satisfy the lending criteria established by the Company. The Company's operations are funded by the proceeds from the issuance of notes payable, due at various dates through 2015.

Basis of accounting:
The Company's prepares its financial statements on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (USGAAP).

Use of estimates:
The preparation of financial statements in conformity with USGAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, management evaluates its estimates, including those related to the adequacy of the allowance for loan losses as well as contingencies. Management bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. The valuation estimates for the allowance for loan losses are accounting estimates that can have material affects on the financial statements.

Cash equivalents:
Cash equivalents include any short-term, highly liquid investments with an original maturity of three months or less. The Company has no cash equivalents at December 31, 2009 and 2008.

Real estate loans receivable:
The Company has both the intent and ability to hold real estate loans until maturity and therefore, real estate loans receivable are classified and accounted for as held for investment and carried at face value.

The Company considers a loan impaired when it becomes probable that interest and principal payments are uncollectible according to the contractual terms of the loan agreement, which is generally the earlier of when a principal or interest payment becomes 90 days past due, or when foreclosure proceedings have been initiated. Loans that become 90 days past due or for which foreclosure proceedings have been initiated subsequent to year end are classified as impaired as of year end (see Note 3).

Note 1 - Organization and Summary of Significant Accounting Policies (Continued)

Real estate loans receivable (continued):
The Company measures impaired loans by either taking the present value of expected future cash flows discounted at the loan's effective interest rate or by assessing the loan's observable market price or the fair value of the collateral, if the loan is collateral dependent. As of December 31, 2009 and 2008, all of the Company's loans are collateralized by real property secured by first deed of trust. Management generally obtains a third-party appraisal or other valuation on the underlying collateral for impaired loans to determine the amount of impairment, if any.

The Company only recognizes interest income on loans determined to be impaired when it is probable the outstanding principal and interest will be collected from the borrower. The Company makes such a determination usually after considering third-party valuation of the underlying collateral. Cash receipts for interest payments are allocated to interest income, except when such payments are specifically designated as principal reduction or when management does not believe the Company's investment in the loan is fully recoverable.

Allowance for loan losses:
The Company maintains an allowance for loan losses on real estate loans receivable. Additions to the allowance are based on an assessment of certain factors including, but not limited to, review of collateral values, borrower payment ability, and general economic conditions. Evaluation of the adequacy of the allowance for loan losses is based primarily on management's periodic assessment and risk rating of the loan portfolio. Additional factors considered by management include the consideration of past loan loss experience, trends in past due and nonperforming loans, risk characteristics of the various classifications of loans, the fair value of underlying collateral, and agreements in place to purchase or sell property. While management uses available information to recognize losses on loans, future adjustments to the allowance for loan losses may be necessary based on changes in economic conditions and the impact of such changes on the Company's borrowers.

As described in Note 3, management has determined that no allowance for loan losses is necessary for the year ended December 31, 2009.

Deferred loan costs:
The Company capitalizes direct costs incurred in issuing notes payable and amortizes those costs on a straight-line basis over the related contractual life of the notes. If notes payable are paid in full prior to contractual maturity, then corresponding deferred loan costs are expensed immediately.

Unearned interest income reserves:
Unearned interest income is recorded as revenue by the Company when the corresponding interest charge has been incurred by the borrower, in accordance with each respective real estate loan.

Note 1 - Organization and Summary of Significant Accounting Policies (Continued)

Revenue recognition:
Revenue is recognized on performing loans when interest has been earned according to the terms of the loans. However, interest is no longer recognized when a loan has become 90 days delinquent based on the terms of the loan agreement or when foreclosure proceedings have been initiated, whichever event occurs first. Loan origination fees earned by the Company are deferred and amortized by the effective interest method over the contractual life of the loan, or fully recognized at the time of loan prepayment.

Marketing costs:
The Company expenses marketing costs as they are incurred. Total marketing costs for the years ended December 31, 2009 and 2008, were $149,783 and $91,748, respectively.

Income taxes:
The Company has elected to be taxed as a partnership. Accordingly, under federal and state income tax regulations, any income or loss of the Company flows through to the member and is reported on the member's tax returns. Therefore, no provision for taxes has been recorded in the accompanying financial statements.

As of January 1, 2009, the Company adopted authoritative guidance, which clarifies the accounting for uncertain income tax positions by prescribing a minimum probability threshold that a tax position must meet before a financial statement benefit is recognized. The minimum threshold is defined by the guidance as a tax position that is more likely than not to be sustained upon examination by the applicable taxing authority, including resolution of any related appeals or litigation processes, based on the technical merits of the position. The tax benefit to be recognized is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement.

The Company has evaluated its tax positions and does not believe it has any uncertain tax positions.

Subsequent events:
During 2009, the Company adopted general standards on accounting for and disclosure of events that occur after the balance sheet date but before the financial statements are issued or are available to be issued. These standards are effective for interim or fiscal periods ended after June 15, 2009. The adoption of this guidance did not materially impact the Company's financial statements. In preparing the financial statements, the Company evaluated subsequent events occurring through June 17, 2010, the date these financial statements were available to be issued, and provided disclosures in Note 6.

Reclassifications:
Certain reclassifications were made to the 2008 financial statements to conform to the current year presentation. The reclassifications have no effect on previously reported net results of operations or member's deficit.

Note 2 - Concentrations of Credit Risk

Financial instruments with concentrations of credit and market risk include cash and cash equivalents and real estate loans receivable.

The Company maintains cash deposit accounts in banks, which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts and performs due diligence on the banks where deposits are held to assess their stability.

The loans funded by the Company are fixed rate loans secured by a first deed of trust on land and commercial and residential properties.

The Company has a geographic concentration of real estate loans in the state of Mississippi of approximately 27% as of December 31, 2009. As such, the Company may be adversely affected by periods of economic decline within that geographic area.

Concentration of real estate loan products exist primarily in land and development loans. As such, the Company has a significant product concentration of credit risk that may be adversely affected by periods of economic decline. The following table illustrates the concentration percentages by product type as of December 31, 2009:

	Amount	Percent
Residential development	$ 9,481,771	60.6%
Commercial land	6,160,000	39.4%
	$ 15,641,771	100.0%

All of the Company's real estate loans will require the borrower to make a balloon payment of the principal at maturity. To the extent that a borrower has an obligation to pay a real estate loan in a large lump-sum payment, its ability to satisfy this obligation may be dependent upon its ability to sell the property, refinance, or raise a substantial amount of cash. An increase in interest rates over the rate applicable at the time of origination of the loan or decrease in real estate valuations may have an adverse effect on the borrower's ability to refinance the loan and, accordingly, could cause the Company to incur additional credit losses.

The Company has one real estate loan receivable totaling approximately $3.7 million that is due from an entity related through common ownership.

Note 3 - Real Estate Loans Receivable

The Company had no loans outstanding as of December 31, 2008. Loans outstanding as of December 31, 2009, consist of the following:

Note receivable with Healthcare of Florence, LLC, bearing interest at 14%, with monthly interest only payments. Principal is due in a lump sum payment upon maturity. Collateralized by real property is Florence, Arizona guaranteed by Healthcare of Florence, LLC and due February 6, 2010.	$ 6,160,000
Note receivable with Steelhead Townhomes, LLC, bearing interest at 14%, with monthly interest only payments. Principal is due in a lump sum payment upon maturity. Collateralized by 18 townhome units in Raymore, Missouri, guaranteed personally by the LLC members, and originally due on July 5, 2009.	1,514,074
Note receivable with CREI Seaside LLC, an entity related through common ownership, bearing interest at 14%, with monthly interest only payments. Principal is due in a lump sum payment upon maturity. Collateralized by 41 condo units in Kenmore, Washington, and due on June 24, 2010.	3,742,697
Note receivable with Chapman Road Development, LLC, bearing interest at 14%, with monthly interest only payments. Principal is due in a lump sum payment upon maturity. Collateralized by 18 duplex lots in Bay St. Louis, Mississippi, guaranteed personally by the LLC members, and due on May 31, 2010.	2,700,000
Note receivable with Chapman Road Development, LLC, bearing interest at 14%, with monthly interest only payments. Principal is due in a lump sum payment upon maturity. Collateralized by approximately 35 acres of entitled land in Bay St. Louis, Mississippi, guaranteed personally by the LLC members, and due on June 7, 2010.	1,525,000
	$ 15,641,771

All of the Company's real estate loans receivable outstanding at December 31, 2009, have an original maturity of one year or less. At December 31, 2009, the Company was not committed to fund any additional loan amounts.

Note 3 - Real Estate Loans Receivable (Continued)

Delinquent and impaired loans:
In accordance with its loan accounting policy, one of the Company's loans outstanding amounting to $1,514,074 was considered impaired at December 31, 2009. The Company is in the process of foreclosing on the underlying collateral of the impaired loan. Interest earned on impaired loans for the year ended December 31, 2009, totaled approximately $43,000, all of which has been accrued as a receivable as of the balance sheet date. In accordance with its revenue recognition policy, the Company will continue to accrue interest income on each delinquent loan until the earlier of (1) the loan becoming 90 days past due or (2) a foreclosure is initiated. Accrued interest recorded remains accrued if management determines that either the underlying collateral or discounted future cash flows of the loan support recovery of principal and accrued interest.

The Company sets aside an allowance for loan losses through periodic charges to earnings. While there exists probable asset quality problems in the loan portfolio due to impaired loans, management has not recorded an allowance for impaired loan losses as of December 31, 2009, due to the Company's assessment of the collateral value supporting the amount of loans outstanding.

Note 4 - Notes Payable

Notes payable (the notes) were issued during 2008 and 2009 pursuant to a private placement to offer up to $20,000,000 of secured investment notes at a rate of 9.50% per annum and guaranteed by RE Capital Investments, LLC, an entity related to the Company through common ownership. Commissions were charged for the notes sold and are included in deferred loan costs, which are amortized over the contractual life. Interest is payable monthly, with principal and unpaid accrued interest due at maturity in 2015. Note holders may elect to have interest reinvested and compounded monthly. An option is available to issue up to $40,000,000 in total secured investment notes, at the sole discretion of the Company.

Beginning December 31, 2010, and once annually on that date thereafter, the Company will redeem up to one-tenth of the outstanding principal amount of the notes at par plus accrued but unpaid interest, at the request of note holders upon at least 30 days prior written notice. The Company may also receive redemption requests upon death of a note holder with payment due 180 days after written notice is received. Redemptions, to the extent of the annual limit, will be honored in the order that requests are received. At December 31, 2009, the current portion of notes payable is one-tenth of the outstanding principal amount, or $1,907,411.

On December 31, 2011, the notes are callable, in whole or in part, at the Company's sole option and demand upon ninety days written notice. All notes mature during 2015.

Note 4 - Notes Payable (Continued)

Notes payable consist of the following at December 31, 2009:

	2009	2008
Notes payable	$ 19,075,243	$ 5,142,718
Reinvested interest	238,078	17,709
	19,313,321	5,160,427
Less current portion of notes payable	(1,907,541)	-
	$ 17,405,780	$ 5,160,427

Future minimum principal payments due under the notes payable subsequent to December 31, 2009, are as follows:

2010	$ 1,907,541
2011	1,716,787
2012	1,545,108
2013	1,390,597
2014	1,251,538
Thereafter	11,501,750
	$19,313,321

Note 5 - Related Party Transactions

The Company has entered into an operating agreement with its parent company, Clearwater REI, LLC (the Manager), to handle the day-to-day operations of the Company and perform services and activities relating to the assets and operations of the Company. Under the terms of the agreement, the Manager may be paid reasonable compensation for services, as determined by the Company. During 2009, the Company paid no compensation to the Manager. Expenses incurred by the Manager on behalf of the Company were reimbursed to the Manager.

Note 5 - Related Party Transactions (Continued)

Transactions between the Company and the Manager consist of the following, which make up the balance of the long-term related party receivable:

	2009	2008
Balance at January 1	**$ (41,263)**	$ -
Salary and overhead allocations	**(319,004)**	(136,121)
Professional fees	**(11,250)**	-
Reimbursement of costs to raise capital	**389,649**	113,234
Cash advances to Manager	**86,700**	2,081
Accrued commissions	**(31,033)**	(20,457)
Balance at December 31	**$ 73,799**	$ (41,263)

Under the terms of its loans receivable, the Company retains an interest reserve for payments to be made on behalf of the borrowers to the Company. Clearwater Asset Management, LLC (CRAM), a related party through common ownership, is responsible for holding the interest reserves and processing interest payments to the Company on the loans receivable. CRAM also processes interest payments to the Company's note holders. CRAM recorded the following transactions on behalf of the Company:

	2009	2008
Interest income received	**$ 803,614**	$ -
Interest payments made	**(1,049,237)**	(79,719)

As of December 31, 2009, CRAM held $535,576 of cash on behalf of the Company, which is included in related party receivables. The balance of interest reserves held by CRAM as of December 31, 2009, was $664,155.

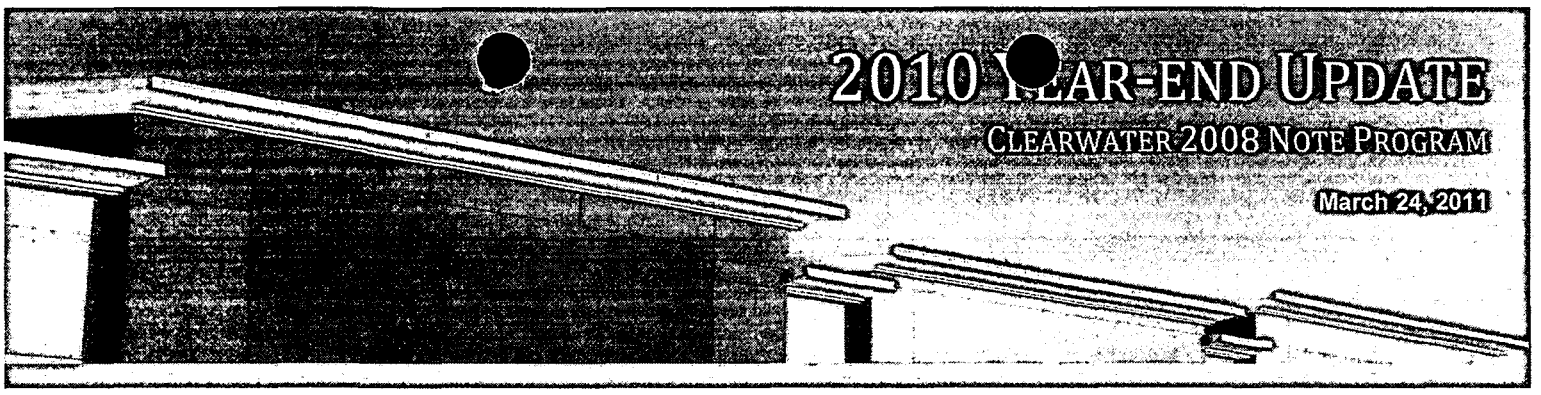
In December 2009, the Company purchased a loan at face value from an entity related through common ownership totaling $1,525,000, secured by a first deed of trust in entitled land located in Mississippi.

Note 6 - Subsequent Events

Subsequent to year end, the Company extended and modified the terms of its loan agreement with Healthcare of Florence, LLC. Under the terms of the extended agreement the amount of the loan increased to ~$9.8M and is due in October 2010.

The Company has two loans outstanding with Chapman Road Development, LLC that matured in May and June 2010. The loans were issued to develop residential land and homes in Mississippi and due to delays in permitting the borrower had not completed development at the time of maturity. The Company is currently in the process of negotiating extensions for the loan agreements.

EXHIBIT 11



Dear Investor:

The purpose of this letter is to keep you informed of the status of the Clearwater 2008 Note Program (the "Note Program"). 2010 was a difficult year for most companies across the globe including the Note Program. The current economic environment is requiring strategic adjustments to preserve investor capital and drive above average returns. The 2008 Note Program has made adjustments to the take out plan for a few of the loans as a result of the current economic environment. As of May 2010, $21,900,000 has been raised from investors and $18,429,697 has been deployed into five portfolio loans which are secured by real property with combined appraised values totaling $28,282,361 (based on the most recent appraisals). These assets are either directly owned by the Note Program or collateralized by first deeds of trust.

As the global financial crisis continues to work itself out, Clearwater is seeing more and more attractive opportunities for the Note Program. The following information outlines our analysis of each of the five portfolio loans.

Healthcare of Florence

(Non Affiliate loan)

Description: This loan is secured by a First Deed of Trust (FDOT) on a 90,000 SF general hospital and long term care facility. The facility is located in one of the most underserved healthcare markets in the nation.

Original Takeout Plan: Upon completion of the renovations, the loan was to be paid off through a refinance with an outside lender.

Update: The renovations are now complete and the hospital has been operational since July, 2010. The loan has matured and the borrowers have been unable to refinance the note due to the difficulties facing the financial markets and delays in the stabilization of the asset. However, the borrower has continued to make interest payments. A forbearance agreement is currently being negotiated with the borrowers. There are parties interested in either purchasing the facility (including a large hospital system operator) or refinancing the real estate.

The appraisal was updated as of 1/19/11 and it shows a "as-is" value of $20,385,000 (48.07% LTV) and a value at "full stabilization" of $21,500,000 (45.58% LTV).

Current Strategy: Although, the loan is in default, our strategy for this loan has not materially changed since origination. The Note Program, along with the borrower, continue to work with potential bridge lenders (immediate takeout) and permanent lenders (takeout upon stabilization). The borrower is working with interested lenders and expects to successfully refinance the project thereby providing a payoff to the Note Program. If for some unforeseen circumstances the refinance does not become available, the hospital is projected to be able to service the Note Program's loan until the credit markets recover.

North Seattle Condos

(Affiliate loan)

Description: This loan is secured by a FDOT on 21 (20 of 41 original units have sold) condominium units located in Kenmore, WA (Seattle).

Original Takeout Plan: The borrower originally purchased this loan at a distressed debt auction for a discount. The note was non-performing at the time and because of the large amount of equity in the deal ($8,000,000 "as-is" appraised value at closing). The Note Program's business plan was to foreclose on the property and liquidate the assets, secure a work out with the borrower or have the debt repaid.

Update: Even during these difficult economic times units continue to sell. Twenty units have sold since we acquired the note, however, the property remains in bankruptcy and proceeds have been used to protect the Note Program's collateral position in the asset.

Current Strategy: The Note Program is currently appealing a bankruptcy court ruling. The Note Program is at the mercy of the bankruptcy court until such time that the court allows collateral to be released or unit sales resume.

Legends 19 - Townhomes
Raymore, MO
(Non Affiliate loan)

Description: Eighteen Townhomes in Raymore, MO (Kansas City) owned by the Note Program through foreclosure.

Original Takeout Plan: Primary, refinance through a traditional lender, secondary, foreclosure and liquidation.

Update: The Note Program has completed the foreclosure on this property and now owns this asset. Sixteen of the 18 units are currently leased at an average rate of $973 per month.

Current Strategy: As noted above the foreclosure of this property is now complete and the Note Program is managing the asset. It is our intention to continue to lease units and collect the positive cash flow in order to meet the Note Program's obligations. As the real estate market recovers we will liquidate units. The Note Program expects this property to continue to realize positive net operating income from this asset.

Coastal Gables - (1) Horizontal Loan; (2) Vertical Loan
Bay St. Louis, MS
(Non Affiliate loan)

Description:
(1) Horizontal Loan - This loan is secured by a FDOT on 124 of 142 residential lots located in Bay St. Louis, Mississippi. Proceeds were used for horizontal development.
(2) Vertical Loan - This loan is secured by a FDOT on phase one (consisting of 18, of 142, lots on which 36 units were to be constructed utilizing the loan proceeds).

Original Takeout Plan:
(1) Horizontal Loan - Lot releases upon commencement of vertical construction.
(2) Vertical Loan - Sales of individual units to investors looking to take advantage of numerous available incentives, and a strong housing market, in the Gulf Opportunity Zone ("GO Zone").

Update: The horizontal construction is substantially complete. Unfortunately, the borrower has lost the government incentives that made this project attractive. The project is significantly behind schedule and due to the lost incentives is no longer economically viable in its current form.

Current Strategy: The Note Program is currently working with the borrower in an attempt to come to an acceptable work out plan. If this effort is unsuccessful then the Note Program will be forced to foreclose and liquidate the asset (142 finished lots).

Again, the Note Program remains optimistic that the work out strategies presented above will allow the Note Program to continue meeting its obligations to its investors. In summary, we at Clearwater believe that in spite of the economic problems, we are actively protecting the assets in the Note Program.

Thank you for your continued patience as we work through these difficult economic times. Please contact our Investor Services Department, if you have any questions.

Sincerely,

Clearwater Real Estate Investments
Toll-free (866) 217-4906
InvestorServices@clearwaterrei.com

EXHIBIT 12

CLEARWATER 2008 NOTE PROGRAM, LLC

REPORT OF INDEPENDENT AUDITORS AND FINANCIAL STATEMENTS

DECEMBER 31, 2010 AND 2009

TABLE OF CONTENTS

MOSS-ADAMS LLP
Certified Public Accountants | Business Consultants

REPORT OF INDEPENDENT AUDITORS

To the Member
Clearwater 2008 Note Program, LLC
Eagle, Idaho

We have audited the accompanying balance sheets of Clearwater 2008 Note Program, LLC (the Company) as of December 31, 2010 and 2009, and the related statements of operations, member's deficit, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Clearwater 2008 Note Program, LLC as of December 31, 2010 and 2009, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

As described in Note 7, during the years ended December 31, 2010 and 2009, the majority of the activity and balances of Clearwater 2008 Note Program, LLC, except notes payable and interest expense, involved related party transactions with entities that were under common Clearwater ownership.

Moss Adams LLP

San Francisco, California
August 19, 2011

Praxity
MEMBER
GLOBAL ALLIANCE OF INDEPENDENT FIRMS

ASSETS

	December 31, 2010	December 31, 2009
CURRENT ASSETS		
Cash and cash equivalents	$ 1,848,846	$ 1,261,964
Interest receivable	150,271	42,699
Real estate loans receivable, net of allowance for losses of $2,311,584 in 2010 and $-0- in 2009	13,567,103	15,641,771
Current portion of related party receivables	212,191	535,576
Total current assets	15,778,411	17,482,010
REAL ESTATE PROPERTY HELD FOR INVESTMENT		
Land	360,000	-
Rental property	1,167,374	-
Accumulated depreciation	(14,150)	-
Total real estate property held for investment	1,513,224	-
OTHER ASSETS		
Related party receivables, long-term	-	73,799
Deferred loan costs, net	1,648,518	1,710,569
	$ 18,940,153	$ 19,266,378

LIABILITIES AND MEMBER'S DEFICIT

CURRENT LIABILITIES		
Accounts payable	$ 14,200	$ -
Accrued interest payable	130,592	109,157
Rental deposits	8,168	-
Unearned interest income reserves	-	664,155
Related party payable	3,544	-
Current portion of notes payable	-	1,907,541
Total current liabilities	156,504	2,680,853
LONG-TERM DEBT		
Notes payable, less current portion	22,487,335	17,405,780
	22,643,839	20,086,633
MEMBER'S DEFICIT		
Membership units	1,000	1,000
Membership units subscription receivable	(1,000)	(1,000)
Member's deficit	(3,703,686)	(820,255)
	(3,703,686)	(820,255)
	$ 18,940,153	$ 19,266,378

See accompanying notes.

	Year Ended December 31,	
	2010	**2009**
REVENUE		
Real estate loan interest	$ 2,116,511	$ 846,313
Other interest	28,138	81,562
Rental income from real estate property held for investment	61,448	-
	2,206,097	927,875
EXPENSES		
Interest	2,300,471	1,207,864
Marketing	-	149,783
General and administrative	291,152	180,469
Rental expenses	25,071	-
Depreciation	14,150	-
Provision for loan losses	2,458,684	-
	5,089,528	1,538,116
NET LOSS	$ (2,883,431)	$ (610,241)

See accompanying notes.

CLEARWATER 2008 NOTE PROGRAM, LLC
STATEMENT OF MEMBER'S DEFICIT

	Units	Units	Deficit	Total
Balance, December 31, 2008	$ 1,000	$ (1,000)	$ (210,014)	$ (210,014)
Net loss	-	-	(610,241)	(610,241)
Balance, December 31, 2009	1,000	(1,000)	(820,255)	(820,255)
Net loss	-	-	(2,883,431)	(2,883,431)
Balance, December 31, 2010	$ 1,000	$ (1,000)	$ (3,703,686)	$ (3,703,686)

See accompanying notes.

	Year Ended December 31, 2010	2009
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	$ (2,883,431)	$ (610,241)
Adjustments to reconcile net loss to net cash from operating activities:		
Amortization of deferred loan costs (included as interest expense)	333,079	158,627
Depreciation	14,150	-
Reinvested interest expense	436,288	220,369
Provision for loan losses	2,458,684	-
Changes in assets and liabilities		
Interest receivable	(306,546)	(42,699)
Related party receivables/payables	400,728	(609,375)
Deferred loan costs	(271,028)	(1,355,425)
Accounts payable	14,200	-
Accrued interest payable	21,435	47,147
Rental deposits	8,168	-
Unearned interest income reserves	(664,155)	664,155
Related party payable	-	(41,263)
Net cash from operating activities	(438,428)	(1,568,705)
CASH FLOWS FROM INVESTING ACTIVITIES		
Real estate loans funded	(3,640,000)	(14,203,271)
Purchase of real estate loan	-	(1,525,000)
Principal payments received on real estate loans receivable	1,927,584	86,500
Net cash from investing activities	(1,712,416)	(15,641,771)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from notes payable	2,828,898	13,932,525
Payments on notes payable	(91,172)	-
Net cash from financing activities	2,737,726	13,932,525
NET CHANGE IN CASH AND CASH EQUIVALENTS	586,882	(3,277,951)
Cash and cash equivalents, beginning of year	1,261,964	4,539,915
Cash and cash equivalents, end of year	$ 1,848,846	$ 1,261,964
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Interest paid	$ 1,509,669	$ 781,721
NONCASH INVESTING AND FINANCING ACTIVITIES		
Reinvested interest on notes payable	$ 436,288	$ 220,369
Foreclosure of loan receivable to real estate property held for investment:		
Real estate property held for investment	$ 1,527,374	$ -
Real estate loan receivable	$ (1,475,500)	$ -
Interest receivable	$ (51,874)	$ -

See accompanying notes.

Note 1 - Organization and Summary of Significant Accounting Policies

Organization:
Clearwater 2008 Note Program, LLC (the Company), formed August 8, 2008, is solely owned by Clearwater REI, LLC (the Manager). The Company acquires and holds interests in acquisition and development loans, secured by real property, that are undertaken by affiliates of Clearwater REI, LLC, and other borrowers who satisfy the lending criteria established by the Company. The Company's operations are funded by the proceeds from the issuance of notes payable, due at various dates through 2015. In 2010, the Company foreclosed on a loan and now owns and operates an 18 unit town-home community located in Raymore, Missouri (see Note 5).

Basis of accounting:
The Company prepares its financial statements on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (USGAAP).

Use of estimates:
The preparation of financial statements in conformity with USGAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, management evaluates its estimates, including those related to the adequacy of the allowance for loan losses and value of real estate held for investment as well as contingencies. Management bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. The valuation estimates for the allowance for loan losses and value of real estate held for investment and the fair values for impaired loans are accounting estimates that can have material affects on the financial statements.

Cash equivalents:
Cash equivalents include any short-term, highly liquid investments with an original maturity of three months or less.

Real estate loans receivable:
The Company has both the intent and ability to hold real estate loans until maturity and therefore, real estate loans receivable are classified and accounted for as held for investment and carried at face value, if not impaired. All loans are originated directly by the Company.

The Company considers a loan impaired when it becomes probable that interest and principal payments are uncollectible according to the contractual terms of the loan agreement, which is generally the earlier of when a principal or interest payment becomes 90 days past due, or when foreclosure proceedings have been initiated. Loans that become 90 days past due or for which foreclosure proceedings have been initiated subsequent to year end are classified as impaired as of year end (see Note 4).

Note 1 - Organization and Summary of Significant Accounting Policies (Continued)

Real estate loans receivable (continued):
The Company measures impaired loans by either taking the present value of expected future cash flows discounted at the loan's effective interest rate or by assessing the loan's observable market price or the fair value of the collateral, if the loan is collateral dependent. As of December 31, 2010 and 2009, all of the Company's loans are collateralized by real property secured by first deeds of trust. Management generally obtains a third-party appraisal or other valuation on the underlying collateral for impaired loans to determine the amount of impairment, if any.

The Company only recognizes interest income on loans determined to be impaired when it is probable the outstanding principal and interest will be collected from the borrower. The Company makes such a determination usually after considering third-party valuation of the underlying collateral. Cash receipts for interest payments are allocated to interest income, except when such payments are specifically designated as principal reduction or when management does not believe the Company's investment in the loan is fully recoverable.

Allowance for loan losses:
The Company maintains an allowance for loan losses on real estate loans receivable. Additions to the allowance are based on an assessment of certain factors including, but not limited to, review of collateral values, borrower payment ability, and general economic conditions. Evaluation of the adequacy of the allowance for loan losses is based primarily on management's periodic assessment and risk rating of the loan portfolio. Additional factors considered by management include the consideration of past loan loss experience, trends in past due and nonperforming loans, risk characteristics of the various classifications of loans, the fair value of underlying collateral, and agreements in place to purchase or sell property. While management uses available information to recognize losses on loans, future adjustments to the allowance for loan losses may be necessary based on changes in economic conditions and the impact of such changes on the Company's borrowers.

The Company maintains a separate allowance for each loan receivable. The allowance for loan losses attributable to each applicable loan is combined to determine the Company's overall allowance, which is included on the balance sheet. At December 31, 2010, the Company has an allowance for losses of $2,311,584. No such allowances were recorded in 2009.

Real estate property held for investment:
Real estate property held for investment is carried at cost, net of accumulated depreciation and net of impairment losses, if any, and depreciated using the straight-line method over the estimated useful lives. Maintenance, repairs, and replacements of fixtures are charged to expense as incurred. The estimated useful life of the rental property is 27.5 years.

Note 1 - Organization and Summary of Significant Accounting Policies (Continued)

Real estate property held for investment (continued):
The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate the carrying amount of the asset may not be recoverable. If the carrying amount of the asset exceeds its estimated undiscounted future net cash flows, before interest, the Company would recognize an impairment loss equal to the difference between its carrying amount and its estimated fair value. If an impairment loss was recognized, the reduced carrying amount of the asset would be accounted for as its new cost. For a depreciable asset, the new cost would be depreciated over the asset's remaining useful life. Generally, fair values are estimated using a discounted cash flow, direct capitalization, or market comparison analysis. The process of evaluating for impairment requires estimates as to future events and conditions, which are subject to varying market and economic factors. Therefore, it is reasonably possible that a change in estimates resulting from judgments as to future events could occur that would affect the recorded amounts of the property. No impairment loss was necessary for the year ended December 31, 2010.

Deferred loan costs:
The Company capitalizes direct costs incurred in issuing notes payable and amortizes those costs on a straight-line basis over the related contractual life of the notes. If notes payable are paid in full prior to contractual maturity, then corresponding deferred loan costs are expensed immediately.

Unearned interest income reserves:
Unearned interest income is recorded as revenue by the Company when the corresponding interest charge has been incurred by the borrower, in accordance with each respective real estate loan.

Revenue recognition:
Revenue is recognized on performing loans when interest has been earned according to the terms of the loans. However, interest is no longer recognized when a loan has become 90 days delinquent based on the terms of the loan agreement or when foreclosure proceedings have been initiated, whichever event occurs first. Loan origination fees earned by the Company are deferred and amortized by the effective interest method over the contractual life of the loan, or fully recognized at the time of loan prepayment.

Rental income consists of leasing town-home units. Rental income is recognized on a straight-line basis over the lives of the related leases when collectability is reasonably assured. The lease terms are generally for periods of one year or less. Differences between the rental income recognized and amount due under the respective lease agreements are determined to be immaterial. Ongoing credit evaluations are performed and no allowance for potential credit losses were provided against the portion of accounts receivable that is estimated to be uncollectible.

Marketing costs:
The Company expenses marketing costs as they are incurred. Total marketing costs for the years ended December 31, 2010 and 2009, were $-0- and $149,783, respectively.

Income taxes:
The Company has elected to be taxed as a partnership. Accordingly, under federal and state income tax regulations, any income or loss of the Company flows through to the member and is reported on the member's tax returns. Therefore, no provision for taxes has been recorded in the accompanying financial statements.

Note 1 - Organization and Summary of Significant Accounting Policies (Continued)

Income taxes (continued):
As of January 1, 2009, the Company adopted authoritative guidance that clarifies the accounting for uncertain income tax positions by prescribing a minimum probability threshold that a tax position must meet before a financial statement benefit is recognized. The minimum threshold is defined by the guidance as a tax position that is more likely than not to be sustained upon examination by the applicable taxing authority, including resolution of any related appeals or litigation processes, based on the technical merits of the position. The tax benefit to be recognized is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement. The Company recognizes interest and penalties related to income tax matters in operating expenses.

The Company has evaluated its tax positions and does not believe it has any uncertain tax positions.

Subsequent events:
Subsequent events are events or transactions that occur after the balance sheet date but before the financial statements are issued. The Company recognizes in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date of the balance sheet, including the estimates inherent in the process of preparing the financial statements. The Company's financial statements do not recognize subsequent events that provide evidence about conditions that did not exist at the date of the balance sheet, but arose after the balance sheet date and before the financial statements were available to be issued.

The Company has evaluated subsequent events through August 19, 2011, which is the date the financial statements were available to be issued, in accordance with the Company's policy related to disclosures of subsequent events, and has not identified any material events that should be disclosed.

Note 2 - Fair Value Measurements

The Company utilizes fair value measurements to record fair value adjustments to certain assets and liabilities. Current accounting standards clarify the definition of fair value, describe methods generally used to appropriately measure fair value in accordance with USGAAP and expand fair value disclosure requirements. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value hierarchy under current accounting guidance prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The hierarchy is measured in three levels based on the reliability of inputs:

Level 1	Quoted prices for identical instruments in active markets.
Level 2	Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; model-derived valuations in which all significant inputs and significant value drivers are observable in active markets.
Level 3	Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

Note 2 - Fair Value Measurements (Continued)

This hierarchy requires the Company to maximize the use of observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. The Company is required to take into account its own credit risk when measuring the fair value of liabilities. Fair value is best determined based upon quoted market prices. However, in many instances, there are no quoted market prices for various financial instruments. In cases where quoted market prices are not available, fair values are based on estimates using present value and other valuation techniques. Those techniques are significantly affected by assumptions used, including the discount rate, estimates of future cash flows and the realization of collateral values. Accordingly, the fair value estimates may not be realized in an immediate settlement of the instrument.

The following is a description of the valuation methodologies used for instruments measured at fair value on a recurring basis and nonrecurring basis and recognized in the balance sheet, as well as the general classification of such instruments pursuant to the valuation hierarchy.

Impaired loans:
The Company does not record loans at fair value on a recurring basis. However, from time to time, a loan is considered impaired and an allowance for loan losses is established. A loan is considered impaired when, based on current information and events, it is probable the Company will be unable to collect all amounts due according to the contractual terms of the loan agreement or when monthly payments are delinquent greater than 90 days. Once a loan is identified as impaired, management generally measures impairment at fair value when the impaired loans observable market price is available or at the value of the underlying collateral when the impaired loan is collateral dependent. The fair value of the loan's collateral is determined by third party appraisals. Those impaired loans not requiring an allowance represent loans for which the fair value of the collateral or observable market price exceed the recorded investments in such loans. For such impaired loans, they are not measured at fair value. At December 31, 2010 and 2009, substantially all of the impaired loans were evaluated based on the fair value of the collateral.

Impaired loans where an allowance is established based on the fair value of collateral require classification in the fair value hierarchy. When the fair value of the collateral is based on an observable market price or is determined utilizing an income or market valuation approach based on an appraisal conducted by an independent, licensed appraiser using observable market data, the Company records the impaired loan using Level 3 inputs. When management determines the fair value of the collateral is further impaired below the appraised value or there is no observable market data included in a current appraisal, the Company also records the impaired loan using Level 3 inputs.

The following table presents the fair value measurements of assets and liabilities recognized in the accompanying balance sheet measured at fair value on a recurring and nonrecurring basis and the level within the fair value hierarchy in which the fair value measurements fall at December 31, 2010 (there were no fair value measurements at December 31, 2009):

	Level 1	Level 2	Level 3	Total
Nonrecurring				
Impaired loans	$ -	$ -	$ 1,913,416	$ 1,913,416

Note 3 - Concentrations of Credit Risk

Financial instruments with concentrations of credit and market risk include cash and cash equivalents and real estate loans receivable.

The Company maintains cash deposit accounts in banks, which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts and performs due diligence on the banks where deposits are held to assess their stability.

The loans funded by the Company are fixed rate loans secured by a first deed of trust on land and commercial and residential properties.

The Company has a geographic concentration of real estate loans in the state of Mississippi of approximately 27% as of December 31, 2010 and 2009, respectively. As such, the Company may be adversely affected by periods of economic decline within that geographic area.

The Company has a geographic concentration of real estate loans in the state of Arizona of approximately 62% and 39% as of December 31, 2010 and 2009, respectively. As such, the Company may be adversely affected by periods of economic decline within that geographic area.

Concentration of real estate loan products exist primarily in land and development loans. The following table illustrates the concentration percentages by product type as of December 31:

	2010		2009	
	Amount	Percent	Amount	Percent
Residential development	$ 3,767,103	27.8%	$ 9,481,771	60.6%
Commercial land	9,800,000	72.2%	6,160,000	39.4%
	$ 13,567,103	100.0%	$ 15,641,771	100.0%

All of the Company's real estate loans will require the borrower to make a balloon payment of the principal at maturity. To the extent that a borrower has an obligation to pay a real estate loan in a large lump-sum payment, its ability to satisfy this obligation may be dependent upon its ability to sell the property, refinance, or raise a substantial amount of cash. An increase in interest rates over the rate applicable at the time of origination of the loan or decrease in real estate valuations may have an adverse effect on the borrower's ability to refinance the loan and, accordingly, could cause the Company to incur additional credit losses.

The Company has one real estate loan receivable totaling approximately $1,853,687 and $3,742,697 as of December 31, 2010 and 2009, respectively, that is due from an entity related through common ownership.

Note 4 - Real Estate Loans Receivable

Loans outstanding as of December 31 consist of the following:

	2010	2009
Note receivable with Healthcare of Florence, LLC, bearing interest at 14%, with monthly interest-only payments. Principal is due in a lump sum payment upon maturity. Collateralized by real property in Florence, Arizona, guaranteed by Healthcare of Florence, LLC and due October 6, 2010. Loan is in default accruing interest at the effective rate, plus the default rate (14% + 5%) and is due on demand.	$ 9,800,000	$ 6,160,000
Note receivable with Steelhead Townhomes, LLC, bearing interest at 14%, with monthly interest-only payments. Principal is due in a lump sum payment upon maturity. Collateralized by 18 townhome units in Raymore, Missouri, guaranteed personally by the LLC members, and originally due on July 5, 2009. Property was foreclosed on in 2010 and as a result, the Company has obtained the townhomes.	-	1,514,074
Note receivable with CREI Seaside LLC, an entity related through common ownership, bearing interest at 14%, with monthly interest-only payments. Principal is due in a lump sum payment upon maturity. Collateralized by 41 condo units in Kenmore, Washington, and due on June 24, 2010. Loan is in default accruing interest at the effective rate, plus the default rate (14% + 5%) and is due on demand.	1,853,687	3,742,697
Note receivable with Chapman Road Development, LLC, bearing interest at 14%, with monthly interest-only payments. Principal is due in a lump sum payment upon maturity. Collateralized by 18 duplex lots in Bay St. Louis, Mississippi, guaranteed personally by the LLC members, and due on May 31, 2010. Loan is in default accruing interest at the effective rate, plus the default rate (14% + 5%) and is due on demand. During 2010, an allowance of $1,769,328 was recorded.	930,672	2,700,000
Note receivable with Chapman Road Development, LLC, bearing interest at 14%, with monthly interest-only payments. Principal is due in a lump sum payment upon maturity. Collateralized by approximately 35 acres of entitled land in Bay St. Louis, Mississippi, guaranteed personally by the LLC members, and due on June 7, 2010. Loan is in default accruing interest at the effective rate, plus the default rate (14% + 5%) and is due on demand. During 2010, an allowance of $542,256 was recorded.	982,744	1,525,000
	$ 13,567,103	$ 15,641,771

Note 4 - Real Estate Loans Receivable (Continued)

All of the Company's real estate loans receivable outstanding at December 31, 2010, have an original maturity of one year or less. At December 31, 2010, the Company was not committed to fund any additional loan amounts.

Interest receivable and impaired loans:
In accordance with its loan accounting policy, two of the Company's loans outstanding amounting to $1,913,416 were considered impaired at December 31, 2010. At December 31, 2009, one of the Company's loans outstanding amounting to $1,514,074 was considered impaired. In accordance with its revenue recognition policy, the Company no longer accrues interest income on all loans that are 90 days past due. As of December 31, 2010, all outstanding loans with the exception of the loan due from Healthcare of Florence, LLC are 90 days past due. The Company is in the process of foreclosing on the underlying collateral of the impaired loans. Interest earned on impaired loans for the years ended December 31, 2010 and 2009, totaled approximately $-0- and $43,000, respectively, all of which has been accrued as a receivable as of the balance sheet date. Recorded accrued interest remains accrued if management determines that either the underlying collateral or discounted future cash flows of the loan support recovery of principal and accrued interest. During 2010, interest receivable of $147,100 was written off related to allowances for loan losses. This amount is included in the provision for loan losses line item on the statements of operations.

The following table presents a rollforward of the allowance for loan loss:

Balance at January 1, 2010	$ -
Provision for loan losses	2,458,684
Less interest receivable charge-offs from impaired loans	(147,100)
Balance at December 31, 2010	$ 2,311,584

Note 5 - Real Estate Property Held for Investment

On July 27, 2010, the Company foreclosed on an 18 unit townhome community located in Raymore, Missouri, which collateralized the loan receivable from a borrower. The property is recorded at cost as of December 31, 2010, net of accumulated depreciation. The original loan was recorded at $1,562,000. The estimated value of the property at the time of foreclosure, was $1,651,200. As the estimated value of the collateral was greater than the Company's recorded investment in the loan, the real estate was brought onto the Company's accounting records at the loan's recorded investment of $1,527,374. At December 31, 2010, the carrying cost of the real estate is $1,513,224, including accumulated depreciation of $14,150. It is the Company's intent to sell this property, but the expected sale is not probable to occur within the next year.

Note 6 - Notes Payable

Notes payable (the notes) were issued during 2008 and 2009 pursuant to a private placement to offer up to $20,000,000 of secured investment notes at a rate of 9.50% per annum and guaranteed by RE Capital Investments, LLC, an entity related to the Company through common ownership. Commissions were charged for the notes sold and are included in deferred loan costs, which are amortized over the contractual life. Interest is payable monthly, with principal and unpaid accrued interest due at maturity in 2015. Note holders may elect to have interest reinvested and compounded monthly. An option is available to issue up to $40,000,000 in total secured investment notes, at the sole discretion of the Company.

Beginning December 31, 2010, and once annually on that date thereafter, the Company will redeem up to one-tenth of the outstanding principal amount of the notes at par plus accrued but unpaid interest, at the request of note holders upon at least 30 days prior written notice. The Company may also receive redemption requests upon death of a note holder with payment due 180 days after written notice is received. Redemptions, to the extent of the annual limit, will be honored in the order that requests are received.

In 2010, the Company suspended early redemption requests. During 2010, $91,172 in redemptions were honored relating to the death of the note holder.

On December 31, 2011, the notes are callable, in whole or in part, at the Company's sole option and demand upon 90 days written notice. All notes mature during 2015.

Notes payable consist of the following at December 31:

	2010	2009
Notes payable	$ 21,904,141	$ 19,075,243
Reinvested interest	674,366	238,078
Principal payments	(91,172)	-
	22,487,335	19,313,321
Less current portion of notes payable	-	(1,907,541)
	$ 22,487,335	$ 17,405,780

Future minimum principal payments due under the notes payable subsequent to December 31, 2010, are as follows:

2011	$ -
2012	-
2013	-
2014	-
2015	22,487,335
	$ 22,487,335

Note 7 - Related Party Transactions

The Company has entered into an operating agreement with its parent company, Clearwater REI, LLC, to handle the day-to-day operations of the Company and perform services and activities relating to the assets and operations of the Company. Under the terms of the agreement, the Manager may be paid reasonable compensation for services, as determined by the Company. During 2010 and 2009, the Company paid no compensation to the Manager. Expenses incurred by the Manager on behalf of the Company were reimbursed to the Manager. In addition, the Manager received loan origination fees charged to borrowers for and upon origination and extension of loans up to 4% of the loan balance. Loan fees received by the Manager directly from borrowers related to loans outstanding in the Company were $145,600 and $654,588 for the years ended December 31, 2010 and 2009, respectively.

Transactions between the Company and the Manager consist of the following, which make up the balance of the long-term related party payable at December 31, 2010, and receivable at December 31, 2009:

	2010	2009
Balance at January 1	$ 73,799	$ (41,263)
Salary and overhead allocations	(175,555)	(319,004)
Professional fees	(6,591)	(11,250)
Reimbursement of costs to raise capital	(271,028)	389,649
Cash advances to Manager	-	86,700
Commissions paid	375,831	(31,033)
Balance at December 31	$ (3,544)	$ 73,799

Under the terms of its loans receivable, the Company retains an interest reserve for payments to be made on behalf of the borrowers to the Company. Clearwater Asset Management, LLC (CRAM), a related party through common ownership, is responsible for holding the interest reserves and processing interest payments to the Company on the loans receivable. CRAM also processes interest payments to the Company's note holders. CRAM recorded the following transactions on behalf of the Company:

	2010	2009
Interest income received	$ 1,144,377	$ 803,614
Interest payments made	(1,506,332)	(1,049,237)
Miscellaneous income	4,570	4,267
Amounts transferred to CRAM	34,000	776,932

As of December 31, 2010 and 2009, CRAM held $212,191 and $535,576 of cash on behalf of the Company, which is included in related party receivables.

In December 2009, the Company purchased a loan at face value from an entity related through common ownership totaling $1,525,000, secured by a first deed of trust in entitled land located in Mississippi.

Note 8 - Contingency

The Company is a defendant in a lawsuit filed by one of its customers for alleged breach of contract. The suit asks for actual and punitive damages but has not yet specified the amounts sought. The Company believes the suit is completely without merit and intends to vigorously defend its position.

EXHIBIT 13

FROM:

Clearwater Real Estate Investments
1300 E State Street, Ste 103
Eagle, Idaho 83616

Notice to Note Holders

Clearwater 2008 Note Program, LLC

October 26, 2011

****IMPORTANT PLEASE OPEN IMMEDIATELY****

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

Dear Note Holder:

It has been over three years since the Clearwater 2008 Note Program, LLC (the "Note Program") first began offering Notes on August 29, 2008. Over the course of those three years, the Note Program has consistently delivered payments in the aggregate amount of **$3,046,180** to its Note Holders resulting in a 9.0% average annual return on invested principal.

This return has been realized amidst what many deem as the most severe economic downturn our economy has experienced in decades. All the while, the Note Program has sought to maintain its conservative guidelines to preserve value for its Note Holders.

Note Holders can be optimistic of the collateral position of the Note Program today. As shown in the following table, because of conservative underwriting, the loans made by the Note Program continue to be secured by the following collateral.

Description of 1st Deed Collateral	Principal Loan Amount	Most Recent Valuation	Date of Valuation
Healthcare of Florence	$ 9,800,000	$ 21,500,000	1/19/2011
Legends 19 – Townhomes	$ 1,475,500	$ 1,720,000	9/15/2010
(1) Coastal Gables - Horizontal Loan (Infrastructure Development) [1]	$ 1,525,000	$ 1,554,400 [1]	9/21/2011
(2) Coastal Gables - Vertical Loan (Construction - 18 Duplexes)	$ 2,063,977	$ 345,600	9/21/2011
TOTALS	**$ 14,864,477**	**$ 25,120,000**	

[1] Includes additional collateral

DISCLOSURE: The valuations provided above reflect the appraised values at the date referenced above and may differ from the current value.

The Promissory Note made to Trailwalk, LLC which was secured by the first deed of trust on property located in Seattle, WA has paid in full and the deed of trust has been released. Litigation regarding the Promissory Note secured by the second deed of trust continues and is subject to the appellate court decision.

Loan Portfolio Update

The following information provides detailed updates for each of the four portfolio loans and the current strategies being undertaken to preserve and maximize value for the Note Holders.

Healthcare of Florence
Florence, AZ
(Non Affiliate loan)

Description: This loan is secured by a First Deed of Trust ("FDOT") on a 90,000 SF general hospital and long term care facility. The facility is located in one of the most underserved healthcare markets in the nation.

Original Takeout Plan: Upon completion of the renovations and stabilization the loan was to be paid off through a refinance with an outside lender.

Update: The loan has matured and the borrowers have been unable to refinance the note due to the difficulties facing the financial markets and delays in the stabilization of the asset. The borrower has made interest payments as they have had the ability to do so; however, as of July 31, 2011 they have fallen behind by $454,955.42. The Note Program is currently in loan work out negotiations with the Borrower.

The appraisal was updated as of 1/19/11 and it shows a "as-is" value of $20,385,000 (48.07% LTV) and a value at "full stabilization" of $21,500,000 (45.58% LTV).
Current Strategy: Healthcare of Florence management expects that when the Operating Rooms become fully operational that the hospital should reach profitability. Delays in reaching stabilization have been caused by receivable collection difficulties, slow operating room ramp up, and delays in obtaining the critical access hospital (CAH) designation. However, the CAH designation was received recently in October. The Note Program is considering a loan workout with the Borrower to allow the hospital the time needed to reach profitability after which the hospital would have to start making full interest payments or repay the loan in full through a refinance. If the borrower is unable to do so within the time allotted for the loan workout the Note Program maybe forced to pursue its rights under the deed of trust.

Legends 19 - Townhomes
Raymore, MO
(Non Affiliate loan)

Description: Eighteen Townhomes in Raymore, MO (Kansas City) owned by the Note Program through foreclosure.

Original Takeout Plan: Primary, refinance through a traditional lender, secondary, foreclosure and liquidation.

Update: The Note Program has completed the foreclosure on this property and now owns this asset. The Note Program has stabilized the asset and occupancy is currently at 94.44% (17 of 18). The average lease rate is $962.65 per month.

Current Strategy: As noted above the foreclosure of this property is now complete and the Note Program is managing the asset. It is our intention to continue to lease units and collect the positive cash flow in order to assist in meeting the Note Program's obligations. As the real estate market recovers we will liquidate units. There is still some outstanding litigation related to the foreclosure that is clouding title and hindering the sale of units and a trial date has been set for 2012.

Coastal Gables - (1) Horizontal Loan; (2) Vertical Loan
Bay St. Louis, MS
(Non Affiliate loan)

Description:
(1) Horizontal Loan - This loan is secured by a FDOT on 113 duplex residential lots located in Bay St. Louis, Mississippi. Proceeds were used for horizontal development.
(2) Vertical Loan - This loan is secured by a FDOT on phase one (consisting of 18 duplex lots).

Original Takeout Plan:
(1) Horizontal Loan - Lot releases upon commencement of vertical construction.
(2) Vertical Loan - Sales of individual units to investors looking to take advantage of numerous available incentives, and a strong housing market, in the Gulf Opportunity Zone ("GO Zone").

Update: The horizontal construction is substantially complete. Unfortunately, the borrower has lost the government incentives that made this project attractive. The project is significantly behind schedule and due to the lost incentives is no longer economically viable in its current form. The Note Program has initiated foreclosure.

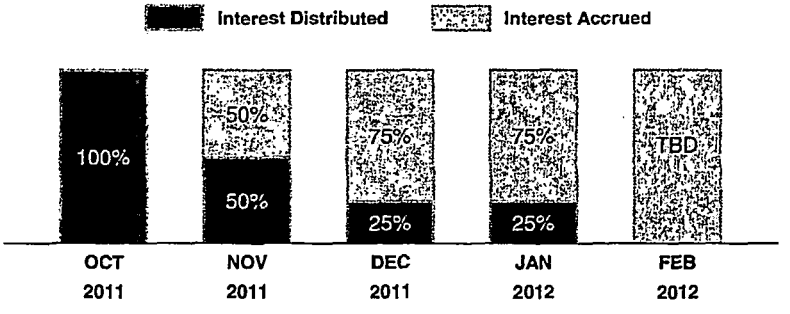
Current Strategy: The Note Program is working diligently to foreclose in order to liquidate the asset.

The Note Program's business plan involves financing real estate acquisition and development projects. Unfortunately, the Note Program has not been immune to the recent downturn. Its borrowers have experienced significant challenges in realizing their exit strategies which has hindered their ability to meet their obligations to the Note Program and in turn the Note Program's ability to meet its obligation to the Note Holders. After careful consideration, the Manager has determined that it's in the best interest of the Note Program's long-term preservation and continuity to discontinue interest payments to the Note Holders for the time being, however the Note Holders' interest will continue to accrue at the same rate.

Accordingly, please be advised that until further notice, all distributions beginning October 15, 2011, will be as follows:

Date	Noteholders (Interest payments)	Noteholders (Reinvesting)
Oct 15, 2011	100% of the monthly interest will be distributed. (No Modification)	Interest will be reinvested as it did prior to this notice.

Nov 15, 2011	50% of the monthly interest will be distributed and 50% will accrue and compound for the benefit of the Noteholders in accordance with Section 3 of the Note dated August 29, 2008.	Interest will be reinvested as it did prior to this notice.
Dec 15, 2011	25% of the monthly interest will be distributed and 75% will accrue and compound for the benefit of the Noteholders in accordance with Section 3 of the Note dated August 29, 2008.	Interest will be reinvested as it did prior to this notice.
Jan 15, 2012	25% of the monthly interest will be distributed and 75% will accrue and compound for the benefit of the Noteholders in accordance with Section 3 of the Note dated August 29, 2008.	Interest will be reinvested as it did prior to this notice.
Feb 15, 2012	The Note Program cash assets will be reassessed at this time to determine if and at what level the program is able to distribute monthly interest payments.	The Note Program cash assets will be reassessed at this time to determine if and at what level the program is able to distribute monthly interest payments.



The chart to the left illustrates the above mentioned interest distribution schedule for Note Holders currently receiving monthly interest distributions.
NOTE: Investors currently participating in the Interest Reinvestment Plan, currently reinvest their interest distributions rather than receive payments each month, accordingly there is NO change to the Interest Reinvestment Plan.

In conclusion, we would like to extend our sincerest gratitude and reaffirm our pledge to you to continue to provide the highest level of service and transparent communication to our valued Note Holders. We want to assure you that our primary focus is to preserve and return your valued principal and we are committed to work diligently in hopes of providing the highest possible return in today's environment. Your patience as we work through these challenges is greatly appreciated.

If you have any questions regarding this correspondence, please send us an email at InvestorServices@ClearwaterREI.com and we will respond in a timely manner.

Sincerely,
Clearwater 2008 Note Program, LLC

EXHIBIT 14

Mark Boling

From: Mark Boling [maboling@earthlink.net]
Sent: Thursday, February 02, 2012 11:42 AM
To: 'Ross Farris'
Subject: Clearwater 2008 Note Program

Mr. Farris,

As a follow-up to today's previous email correspondence, to the extent that no notice of default or breach is required by the Transaction Documents for the Company's failure to timely pay full interest and/or suspension of the principal redemption, I request and demand full payment of my unpaid principal balance and accrued, but unpaid, interest to the date of full payment is made.

If a notice and cure period for the defaults or breaches previously set forth is necessary, I hereby request and demand that the stated defaults or breaches be timely cured. And if not timely cured, immediately thereafter I request and demand full payment of my unpaid principal balance and accrued, but unpaid, interest to the date of full payment is made.

Should any of the aforementioned notices of default or breach sent to you on this date be deemed premature, please consider the two (2) email correspondences sent to you on this date as sufficient notice and demand, if necessary, as of the date when my claim(s) accrues.

Sincerely,

Mark Boling
Cert. #08-470

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Thursday, February 02, 2012 10:29 AM
To: 'Ross Farris'
Subject: Clearwater 2008 Note Program

Mr. Farris,

This email will confirm our telephone conversation today, wherein you informed me that the Company has chosen to accrue my interest payments pursuant to Section 3 of the Note. You will be sending me a copy of Exhibit A to the Note, which I have not previously received and an explanation of why I was not provided a copy of the Note before submitting my Subscription Agreement.

Based on the Company's failure to fully pay interest payments under the Note for November 2011, December 2011 and January 2012, please consider this email correspondence as sufficient written Notice of Default on Interest Payments under the Transaction Documents.

Based on the Company's suspension of liquidation requests, please consider this email correspondence as sufficient Notice of Default on my right to Principal Liquidation under the Transaction Documents.

Sincerely,

Mark Boling
Cert. #08-470

From: Ross Farris [mailto:ross@clearwaterrei.com]
Sent: Wednesday, January 18, 2012 1:06 PM
To: maboling@earthlink.net
Subject: RE: Clearwater 2008 Note Program

Mr. Boling,
Sorry for the confusion. The correspondence you received is not in reference to your lasted correspondence. It is merely a notice for all Noteholders that requested a liquidation in 2011. I have been notified that you can expect a response to your latest inquiry in the near term.

Thank you for your patience.

Kind regards,

Ross Farris
Director of Marketing & Investor Relations
Clearwater Real Estate Investments
(208) 639-4486 office
(866) 217-4906 toll-free
(208) 939-1431 fax

Please consider the environment before printing this email.
This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply mail and destroy all copies and the original message. This material does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Tuesday, January 17, 2012 7:10 PM
To: Ross Farris
Subject: Clearwater 2008 Note Program

Mr. Farris,

I have received a letter dated January 12, 2012 regarding 2011 Liquidation Notification. Said letter does not address the issues presented in my previous email correspondence to Investor Services dated December 20, 2011 below. Please consult with Investor Services and the management of your company and respond in full to my inquiries and request that my subscription be immediately rescinded and the total principal amount of my note be restored.

Thank you.

Sincerely,

Mark Boling
Cert. #08-470

From: Ross Farris [mailto:ross@clearwaterrei.com]
Sent: Wednesday, December 21, 2011 1:45 PM
To: maboling@earthlink.net
Subject: RE: Clearwater 2008 Note Program

Mr. Boling,
We will work on responses to your inquiries and provide responses as soon as we are able. As we are short staffed over the holiday season, we appreciate your patience in advance.

Thank you,

Ross Farris
Director of Marketing & Investor Relations
Clearwater Real Estate Investments
(208) 639-4486 office
(866) 217-4906 toll-free
(208) 939-1431 fax

Please consider the environment before printing this email.
This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply mail and destroy all copies and the original message. This material does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Tuesday, December 20, 2011 11:41 AM
To: InvestorServices
Cc: Ross Farris
Subject: Clearwater 2008 Note Program

To whom it may concern,

I received a letter dated December 14, 2011 ("12/14/11 letter") from someone in "Investor Services." Thank you for your responses to my previous inquiries.

1) As the author of the letter, please provide me with your name and job position with the company, so I may be assured that the content of my inquiries are being provided to, understood and responded to by the management of the Company.

2) Attached to the 12/14/11 letter was a form letter dated March 24, 2011 that purports to provide instructions on how to review 2010 audited financials. I was informed by Laurie Fischer, Controller for Clearwater Investments that the 2010 audited financials for the Clearwater 2008 Note Program, LLC were not however available until August 19, 2011.

3) In the section of the 12/14/11 letter regarding Callability, your response to the inquiry regarding this term was identical to Mr. Farris' previous email response dated 12/1/11 regarding Liquidity, to wit:

> "**Liquidity** - The objective of the 2008 Note Program continues to be the return of the principal investment and interest payments to each Note Holder. The Note Program has a duty to ALL Note Holders to make reasonable business decisions and protect its assets to reach this objective and as such cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders. The Note Program, must continue to restrict its interest payments and hold all liquidation requests until such time that the liquidation requests will not be at parity with the Company's overall indebtedness to

all of its Note Holders. We continue to work diligently, to ease the current financial restrictions and will continue to honor the order in which your liquidation request was received. We appreciate your continued patience and understanding and will let you know as soon as we are able to once again honor the liquidation requests."

My reading of the "Liquidity; Callability" section of the PPM does not reflect any discretion by the Company to prioritize and/or suspend liquidation requests made by the Noteholders. This term was a material consideration that I relied upon in my purchasing a subscription to the note program. The Company's position that it "cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders" is unsupported by the PPM or the supplements thereto. Please identify the specific language in the PPM or supplements that creates the Company's contractual authority to prioritize and/or suspend all liquidation requests made by the Noteholders, which would be in direct contradiction to the expressed and unconditional language set forth in the "Liquidity; Callability" section of the PPM.

If the Company maintains now and at the time of the initial PPM that it can alter or over-ride this expressed term regarding Callability on the basis that it has an obligation to ALL Note holders allowing the Company not to abide by this expressed term, then I would request that my subscription be immediately rescinded and the total principal amount of my note be restored.

4) Pursuant to the Guaranty for the Clearwater 2008 Note Program, attached as Exhibit D to the PPM dated August 8, 2008, RE Capital Investments, LLC "unconditionally guarantees the payment of the original principal amount of the Notes as provided therein." The section entitled "Liquidity: Callability" in the PPM for the Clearwater 2008 Note Program and the 3rd Supplement thereto provides that Notes representing up to 10% of the original principal amount may be called annually by the Noteholders. These are the provisions of the Note. No expressed discretion is given to the Company or Manager in the PPM to prioritize, suspend or refuse such timely payments. If the Company intends not to timely repay a portion of the original principal amount to the Noteholder under the "Liquidity: Callability" section of the PPM, why isn't the Guarantor required to immediately pay such original principal amounts to the Noteholder under the unconditional guaranty?

5) When the initial PPM dated August 8, 2008 was disclosed, a recent balance sheet as of July 31, 2008 by the Guarantor, RE Capital Investments, LLC, was attached. During the subscription period when the 3rd Supplement to the PPM dated January 20, 2010 was disclosed, another recent balance sheet as of December 31, 2009, by the Guarantor, RE Capital Investments, LLC, was attached. In the 3rd Supplement to the PPM, the Company acknowledged that the Guarantor had insufficient net worth under the Guaranty. After that the subscription period has ended and the note program has been funded, approximately two years later with the on-going serious financial condition of the Clearwater 2008 Note Program, the Company and Manager have not been able to secure a current balance sheet from the Guarantor, whose officers are inter-related to the Company and Manager. Please explain how this failure to timely secure a current balance sheet from the Guarantor is not tantamount to gross negligence or intentional malfeasance on the part of the Company and/or the Manager to protect the interests and principal investment amounts of the Noteholders when the need to look to the Guarantor exists to exercise the Callability term by the Noteholders?

Thank you in advance for your continued cooperation in attempting to resolve these issues.

Sincerely,

Mark Boling
Cert. #08-470

From: Ross Farris [mailto:ross@clearwaterrei.com]
Sent: Tuesday, December 13, 2011 12:33 PM
To: maboling@earthlink.net
Subject: RE: Clearwater 2008 Note Program

Mr. Boling,
I just wanted to follow up and let you know that your latest email has been sent to compliance and you can expect a response in the near term. Thank you for your patience.

Kind regards,
Ross Farris

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Wednesday, December 07, 2011 6:52 PM
To: Ross Farris
Subject: Clearwater 2008 Note Program

Mr. Farris,

I reviewed your most recent voicemail message sent to me today requesting that I call you. Notwithstanding the need for you to check with the company's Compliance, and for the sake of clarity, I would prefer that you respond to my questions via this email string. Thank you.

Mark Boling

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Wednesday, December 07, 2011 8:23 AM
To: 'ross@clearwaterrei.com'
Subject: Clearwater 2008 Note Program

Mr. Farris,

I reviewed your voicemail message yesterday evening requesting that I call you. For expediency and clarity, I would prefer you respond to my questions via this email string. Thank you.

Mark Boling

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Thursday, December 01, 2011 4:22 PM
To: 'ross@clearwaterrei.com'
Subject: Clearwater 2008 Note Program

Mr. Farris,

I am in receipt of your email correspondence dated December 1, 2011. Unfortunately, your response did not provide specific information to many of my questions sent to you by email transmission on November 10, 2010. In particular,

Inquiry re: October 26, 2011 – Notice to Note Holders

1) What is the estimated cost of appraisal, by project, for the Healthcare of Florence and Legends 19 projects?
   Your response has not specifically addressed this question.
2) While I understand that it would purportedly be costly to obtain appraisals every 60 days, does the Company consider the "Notice to Note Holder" dated October 26, 2011 to be a significant communication on the status of the Clearwater 2008 Note Program that would warrant a current valuation of all significant projects?
   If the notice is significant, why wasn't a current appraisal provided as a good faith effort on the part of the Company to inform the Note Holders of the most accurate valuation of the Healthcare of Florence and Legends 19 projects?
   If the notice is not considered significant, why was this unexpected interim notice sent to the Noteholders?
   Your response has not specifically addressed these questions.
3) Other than costs, did the Company have any other reason in not providing a current valuation for all major projects in this "Notice to Note Holder" communication? If so, what were the reasons?
   Your response has not specifically addressed this question.
4) Why are the loan amounts and valuations totaled (and stated **in bold**) as if cross-collateralization agreements existed between the project loans?
   For instance, will the security of the Healthcare of Florence project, which value exceeds that project's principal loan amount, secure the Coastal Gables – Vertical Loan, which is extremely under-secured?
   Your response has not specifically addressed this question.
   If not, are the total of the loan amounts and valuations as a comparison likely to mislead the Noteholders?
5) Since the additional collateral, consisting of 14 acres of land located in Waveland, Mississippi, has an appraised value of $640,000, does that mean that the valuation of the 113 duplex residential lots in Bay St. Louis, MS is $914,400 ($1,554,400 - $640,000) for the Coastal Gables – Horizontal Loan?
6) Is this additional collateral, consisting of 14 acres of land located in Waveland, Mississippi, for the Coastal Gables – Horizontal Loan secured by a FDOT?
   What efforts, if any, have been made to foreclose on this additional collateral?
   Your response has not specifically addressed these questions.
7) Prior to lending money to the borrower in the Coastal Gables project, what due diligence was performed by the Company to confirm that the government incentives that made the project attractive to the borrower were intact and what conditions needed to exist for the borrower to lose those incentives?
   Your response has not specifically addressed this question.

Private Placement Memorandum (Book No. 08Note-A238) ["PPM']:

1) The PPM sets forth on page 24 that "[w]ithin 120 days after the end of each calendar year, the Company will send to each Noteholder of record during the previous year: (a) an audited balance sheet for the Company as of the end of such fiscal year and (b) an audited statement of the Company's earnings for such fiscal year, along with a year-end status report." The audited financial documents for the years ending December 31, 2009 and 2010 from Moss Adams LLP that you attached to your last email showing a date of August 19, 2011 was first provided to me in your email.
   Based on your reading of the content of the PPM, would these disclosures be considered timely?
   Your response attaches a generic cover letter. Please provide sufficient documentation to establish that (a) an audited balance sheet for the Company as of the end of such fiscal year and (b) an audited statement of the Company's earnings for such fiscal year was sent to me within 120 days after the end of the 2010 and 2011 calendar years.

2) Please provide a copy of the last Balance Sheet that reflects RE Capital Investments, LLC's net worth received by the Company.

What date was this document received by the Company?

Please provide sufficient documentation to establish that the last Balance Sheet for RE Capital Investments, LLC was sent to me in February 2010.

3) Based on the facts that 1) Ronald D. Meyer owns 100% of Terron Investments, Inc., which owns 50% of RE Capital Investments, LLC, and 2) Mr. Meyer is the Chief Development Officer of the Company, wouldn't the Company have a significant and constant inside contact with RE Capital Investments, LLC to timely acquire any necessary financial information that would continually assess the viability of the guaranty?

Are there any overlapping officers and/or directors between the Company and RE Capital Investments, LLC?

If so, please state the names and positions with each business entity.

Your response has not specifically addressed these questions. The 2nd supplement does not fully satisfy the inquiries made.

4) What is reason, if any, given by RE Capital Investments for any delay in the Company obtaining a recent Balance Sheet that reflects RE Capital Investments, LLC's net worth?

Has the credibility of the reason been verified by the Company? How?

Your response has not specifically addressed these questions.

Liquidity – Callibility:

1) Due to the untimely disclosure of the audited financial documents to the Noteholders for the years ending December 31, 2009 and 2010, I must object to the 11/7/11 priority date given to my request for liquidation and request that the notice date be set at May 1, 2010 for the year 2010 and May 1, 2011 for the year 2011 and thereafter, which are the dates that the audited financial documents were required to be disclosed to the Noteholders.
2) My reading of the "Liquidity; Callability" section of the PPM does not reflect any discretion by the Company to prioritize and/or suspend liquidation requests made by the Noteholders. Please identify the specific language in the PPM that creates the Company's contractual authority to prioritize and/or suspend all liquidation requests made by the Noteholders, which would be in direct contradiction to the expressed language set forth in the "Liquidity; Callability" section of the PPM.
Your response has not specifically addressed this question.

Thank you for your kind attention to these matters.

Mark Boling

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Thursday, November 10, 2011 5:50 PM
To: 'Ross Farris'
Subject: Clearwater 2008 Note Program

Mr. Farris,

Thank you for responding to my email and invitation for other questions. Your responses have raised some additional concerns regarding the Clearwater 2008 Note Program.

Inquiry re: October 26, 2011 – Notice to Note Holders

8) What is the estimated cost of appraisal, by project, for the Healthcare of Florence and Legends 19 projects?
9) While I understand that it would purportedly be costly to obtain appraisals every 60 days, does the Company consider the "Notice to Note Holder" dated October 26, 2011 to be a significant communication on the status of the Clearwater 2008 Note Program that would warrant a current valuation of all significant projects?

If the notice is significant, why wasn't a current appraisal provided as a good faith effort on the part of the Company to inform the Note Holders of the most accurate valuation of the Healthcare of Florence and Legends 19 projects?

If the notice is not considered significant, why was this unexpected interim notice sent to the Noteholders?

10) Other than costs, did the Company have any other reason in not providing a current valuation for all major projects in this "Notice to Note Holder" communication? If so, what were the reasons?
11) Why are the loan amounts and valuations totaled (and stated **in bold**) as if cross-collateralization agreements existed between the project loans?

For instance, will the security of the Healthcare of Florence project, which value exceeds that project's principal loan amount, secure the Coastal Gables – Vertical Loan, which is extremely under-secured?

If not, are the total of the loan amounts and valuations as a comparison likely to mislead the Noteholders?

12) Since the additional collateral, consisting of 14 acres of land located in Waveland, Mississippi, has an appraised value of $640,000, does that mean that the valuation of the 113 duplex residential lots in Bay St. Louis, MS is $914,400 ($1,554,400 - $640,000) for the Coastal Gables – Horizontal Loan?
13) Is this additional collateral for the Coastal Gables – Horizontal Loan secured by a FDOT?

What efforts, if any, have been made to foreclose on this additional collateral?

14) Prior to lending money to the borrower in the Coastal Gables project, what due diligence was performed by the Company to confirm that the government incentives that made the project attractive to the borrower were intact and what conditions needed to exist for the borrower to lose those incentives?

Private Placement Memorandum (Book No. 08Note-A238) ["PPM']:

5) The PPM sets forth on page 24 that "[w]ithin 120 days after the end of each calendar year, the Company will send to each Noteholder of record during the previous year: (a) an audited balance sheet for the Company as of the end of such fiscal year and (b) an audited statement of the Company's earnings for such fiscal year, along with a year-end status report." The audited financial documents for the years ending December 31, 2009 and 2010 from Moss Adams LLP that you attached to your last email showing a date of August 19, 2011 was first provided to me in your email.

Based on your reading of the content of the PPM, would these disclosures be considered timely? If so, why?

6) Please provide a copy of the last Balance Sheet that reflects RE Capital Investments, LLC's net worth received by the Company.

What date was this document received by the Company?

7) Based on the facts that 1) Ronald D. Meyer owns 100% of Terron Investments, Inc., which owns 50% of RE Capital Investments, LLC, and 2) Mr. Meyer is the Chief Development Officer of the Company, wouldn't the Company have a significant and constant inside contact with RE Capital Investments, LLC to timely acquire any necessary financial information that would continually assess the viability of the guaranty?

Are there any overlapping officers and/or directors between the Company and RE Capital Investments, LLC?

If so, please state the names and positions with each business entity.

8) What is reason, if any, given by RE Capital Investments for any delay in the Company obtaining a recent Balance Sheet that reflects RE Capital Investments, LLC's net worth?
Has the credibility of the reason been verified by the Company? How?

Liquidity – Callibility:

3) Due to the untimely disclosure of the audited financial documents to the Noteholders for the years ending December 31, 2009 and 2010, I must object to the 11/7/11 priority date given to my request for liquidation and request that the notice date be set at May 1, 2010 for the year 2010 and May 1, 2011 for the year 2011 and thereafter, which are the dates that the audited financial documents were required to be disclosed to the Noteholders.
4) My reading of the "Liquidity; Callability" section of the PPM does not reflect any discretion by the Company to prioritize and/or suspend liquidation requests made by the Noteholders. Please identify the specific language in the PPM that creates the Company's contractual authority to prioritize and/or suspend all liquidation requests made by the Noteholders, which would be in direct contradiction to the expressed language set forth in the "Liquidity; Callability" section of the PPM.

Thank you for your kind attention to these matters.

Mark Boling

From: Ross Farris [mailto:ross@clearwaterrei.com]
Sent: Thursday, November 10, 2011 2:15 PM
To: maboling@earthlink.net
Subject: FW: Clearwater 2008 Note Program

Sorry about that, I forgot to add the attachments... see attached hereto.

Thanks,

Ross Farris
Director of Marketing & Investor Relations
Clearwater Real Estate Investments
(208) 639-4486 office
(866) 217-4906 toll-free
(208) 939-1431 fax

Please consider the environment before printing this email.
This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply mail and destroy all copies and the original message. This material does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

From: Ross Farris
Sent: Thursday, November 10, 2011 3:10 PM
To: 'maboling@earthlink.net'
Subject: RE: Clearwater 2008 Note Program

Dear Mr. Boling
Thank you for you email. We apologize for the somewhat delayed response. We have been dealing with a high volume of inquiries and have provided responses to your questions below in blue.

Inquiry re: October 26, 2011 – No...e to Note Holders

1) Please provide me with an explanation of why a valuation for the Healthcare of Florence has not been updated to reflect a current (last 60 day) valuation and what efforts are being made to do so. A: It would be very cost prohibitive to pay for appraisals every 60 days on every asset within the program.

2) Please provide me with an explanation of why a valuation for the Legends 19 – Townhomes has not been updated to reflect a current (last 60 day) valuation and what efforts are being made to do so. A: See previous response.

3) Please provide me with the details and amounts of the "additional collateral" that exists for the Coastal Gables – Horizontal Loan. A: The additional collateral includes 14 acres of land located in Waveland, Mississippi. Based on the most recent appraisal dated 9/21/11 the property appraises at $640,000.

4) Please provide me, according to each government incentive, a) the details of the incentive, b) when the borrower lost the government incentive and c) why the borrower lost the government incentive that made the Coastal Gables project attractive. A: Once the asset is foreclosed upon by the 2008 Note Program, Clearwater will be able to investigate the loss of government incentives by the borrower with the Mississippi Development Authority to determine the details of why and how this occurred. What we do know is that the government incentive was known as the SRAP Program (Small Rental Assistance Program) and was administered by the Mississippi Development Authority. This SRAP incentive was an approximately $30,000 per unit 5 year forgivable loan.

5) Please provide me with the percentage of completion for the Coastal Gables project as of October 26, 2011. A: The infrastructure of the project (no buildings) is substantially complete with the exception of the final layer of asphalt on the roads.

PPM:

1) Please provide me with the Company's 2010 Annual Report. A: Attached is the 2010 Year-end update that was previously mailed to you as well as the 2010 Audited Financials that are available via the investor online portal.

2) Please provide me with a recent Balance Sheet that reflects RE Capital Investments, LLC's net worth (difference between total assets and total liabilities). A: Clearwater has made multiple attempts to get updated financials from RE Capital and we have received word that we should have updated financials no later than year end 2011.

Liquidity – Callibility:

PLEASE TAKE NOTICE that I hereby seek to call 10% of the original principal amount of my Certificate #08-470 pursuant to the Private Placement Memorandum (Book No. 08Note-A238), plus all additional amounts due and owing under the corresponding Note. This email correspondence shall constitute sufficient written notice of callibility for the calendar year 2010 and each consecutive calendar year thereafter until the principal amount of said certificate is paid in full. A: Your request to liquidate your note is acknowledged and has been recorded with a request date of 11/7/2011. You will be added to the liquidation request list with your request date serving as your priority date. However, all liquidation requests have been suspended until such time that the liquidation requests will not be at parity with the Company's overall indebtedness to all of its Note Holders. The objective of the 2008 Note Program continues to be the return of the principal investment and interest payments to each investor. The Note Program has a duty to all investors to make reasonable business decisions and protect its assets to reach this objective and as such cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders.

Thank you.

Mark Boling

Please let us know if you have any other questions.

Sincerely,

Ross Farris
Director of Marketing & Investor Relations
Clearwater Real Estate Investments
(208) 639-4486 office
(866) 217-4906 toll-free
(208) 939-1431 fax

Please consider the environment before printing this email.
This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply mail and destroy all copies and the original message. This material does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Sunday, November 06, 2011 3:10 PM
To: InvestorServices
Subject: Clearwater 2008 Note Program

Inquiry re: October 26, 2011 – Notice to Note Holders

1) Please provide me with an explanation of why a valuation for the Healthcare of Florence has not been updated to reflect a current (last 60 day) valuation and what efforts are being made to do so.

2) Please provide me with an explanation of why a valuation for the Legends 19 – Townhomes has not been updated to reflect a current (last 60 day) valuation and what efforts are being made to do so.

3) Please provide me with the details and amounts of the "additional collateral" that exists for the Coastal Gables – Horizontal Loan.

4) Please provide me, according to each government incentive, a) the details of the incentive, b) when the borrower lost the government incentive and c) why the borrower lost the government incentive that made the Coastal Gables project attractive.

5) Please provide me with the percentage of completion for the Coastal Gables project as of October 26, 2011.

PPM:

1) Please provide me with the Company's 2010 Annual Report.

2) Please provide me with a recent Balance Sheet that reflects RE Capital Investments, LLC's net worth (difference between total assets and total liabilities).

Liquidity – Callibility:

PLEASE TAKE NOTICE that I hereby seek to call 10% of the original principal amount of my Certificate #08-470 pursuant to the Private Placement Memorandum (Book No. 08Note-A238), plus all additional amounts

due and owing under the correspo....ng Note. This email correspondence s..... constitute sufficient written notice of callibility for the calendar year 2010 and each consecutive calendar year thereafter until the principal amount of said certificate is paid in full.

Thank you.

Mark Boling

Cert. #08-470

!SIG:4f162a0676755568219935!

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

December 14, 2011

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

Dear Mr. Boling,

We have received your emails dated November 6, November 10, December 1, and December 7, 2011, which outline your numerous follow up questions to the October 26, 2011 Notice to Noteholders. We have attempted to contact you by phone and are including your broker dealer and registered representative of your questions so they are informed of your inquiries and can provide additional assistance to you in answering many of your questions.

I. DEBT INVESTMENT

On February 27, 2010, you purchased a debt investment through Marna Hart, your registered representative, in the amount of $50,000.00 and became one of the Noteholders of that certain Promissory Note by and between the Noteholders and Clearwater 2008 Note Program, LLC (the "Company") dated August 29, 2008.

As part of this investment you received a Private Placement Memorandum dated August 29, 2008 ("PPM"). As you have noticed, this PPM discusses the offering in great detail, please contact your registered representative regarding your investment questions and they should also be available to answer many of your questions.

II. RESPONSES TO YOUR EMAIL DATED NOVEMBER 10, 2011.

The responses below are numbered in accordance with your email dated November 10, 2011.

Response to Question 1. The cost of appraisals vary and the Manager has no way of knowing the costs of appraisals until a bid is received from the appraiser.

Response to Question 2. The information contained in the notice to Noteholders was the most recent information available to the Manager. In honoring our continued commitment to the Noteholders we will continue to provide you with updated information regarding the collateral as it becomes available.

Response to Question 3. One of the items discussed in the PPM is that all decision regarding management of the Company's affairs are to be made exclusively by the Manager and not by the Noteholders. As such information regarding how much to pay for appraisals and when they are ordered are determined exclusively by the Manager.

Additionally, appraisals can only be relied upon by the "authorized user." Clearwater 2008 Note Program, LLC is the authorized user of the appraisals and the Noteholders may not rely on the information contained in the appraisals. However, Noteholder's can be assured that the Company will continue to define loan to value ratios with MAI appraisals and/or broker's opinions.

Response to Question 4. The Company's loans were for various projects and were made to different borrowers; therefore the loans are not cross collateralized. The totaled amounts in the Notice that your email were to simply show the total appraised value of collateral.

Response to Question 5. According to the most recent appraisal, the 113 residential duplex lots in Bay St., Louis, Mississippi are cumulative valued of $1,260,000 and the additional 14 acres of land located in Waveland, Mississippi has an appraised value of $640,000.

Response to Question 6. All of the Company's loans are collateralized by a first position mortgage or first deed of trust, including the additional collateral in Waveland, Mississippi. The foreclosure of the additional collateral in Waveland,

Mississippi was completed on November 10, 2011, with the exception of 2 lots, which are currently protected by a bankruptcy stay. The Company has retained counsel to request relief from the bankruptcy stay so that the foreclosure of the remaining 2 lots can be completed.

Response to Question 7. The Company's affairs are to be made exclusively by the Manager and not by the Noteholders, including the due diligence of projects. The Noteholders can be assured that the required documentation was obtained by the Investment Committee.

Private Placement Memorandum Questions.

Response to Question 1. The Company timely provided you with the 2010 year-end report on March 24, 2010. The enclosed cover letter that accompanied this report notified you of the availability of the audited financials via the online portal or by request as of May 1, 2010. We have enclosed a copy of the letter that was mailed to you and the address that the letter was mailed to. Additionally, your registered representative would have also received a copy of the year-end report.

Response to Question 2. The balance sheet for RE Capital Investments, LLC was provided to you and was included in the Private Placement Memorandum ("PPM") kit that was provided to you by your registered representative prior to your subscription. It was included as Supplement No. 3 which included the 2009 balance sheet for RE Capital Investments, LLC. Our records indicate your PPM kit number to be 08Note-A238 which would have included the 3rd Supplement to the PPM.

Response to Question 3. The Company provided the requested information in the PPM beginning on page 16 and in the Second Supplement dated June 30, 2009.

Response to Question 4. The Company has requested a final 2010 balance sheet from RE Capital.

Response to Question Regarding Callability. The objective of the 2008 Note Program continues to be the return of the principal investment and interest payments to each Note Holder. The Note Program has a duty to ALL Note Holders to make reasonable business decisions and protect its assets to reach this objective and as such cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders. The Note Program, must continue to restrict its interest payments and hold all liquidation requests until such time that the liquidation requests will not be at parity with the Company's overall indebtedness to all of its Note Holders. We continue to work diligently, to ease the current financial restrictions and will continue to honor the order in which your liquidation request was received. We appreciate your continued patience and understanding and will let you know as soon as we are able to once again honor the liquidation requests.

We will continue to answer any questions that you may have, and suggest that you also contact your registered representative, Marna Hart who can be reached at (949) 859-7127 and can serve as an additional source for many of your questions regarding your investment.

Sincerely,

Clearwater 2008 Note Program, LLC
(866) 217-4906
InvestorServices@Clearwaterrei.com

Cc: Marna Hart (Independent Financial Group)

Enclosure

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

March 24, 2011

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

RE: 2010 Year-End Update
Clearwater 2008 Note Program

Dear Valued Investor,

Enclosed, please find the 2010 Year-End Update for the Clearwater 2008 Note Program.

Pursuant to the Private Placement Memorandum, the 2010 audited financials will be completed within 120 days of year's end. Beginning May 1st, Noteholders may access the 2010 audited financials by one of three methods:

1. Online	2. Email	3. Regular Mail
Login to our online Investor Portal: 1) Go to: **www.ClearwaterREI.com** 2) Click on "Investors" 3) Follow online instructions (A recent Quarterly Statement may be needed)	Email your request to: **InvestorServices@ClearwaterREI.com** (Please include your Certificate Number)	Mail your request to: **1300 E State Street** **Suite 103** **Eagle, Idaho 83616** (Please include your Certificate Number)

Also, as a reminder, 1099-INT's were mailed in January. If you invested in the Clearwater 2008 Note Program through a qualified plan (i.e. IRA, 401(k), SEP etc...), you should NOT have received a 1099-INT. However, if you have not received a 1099-INT and did not invest through a qualified plan, please contact us and we will gladly send you a copy immediately.

If you have any questions please contact us toll-free at (866) 217-4906 or by email at InvestorServices@clearwaterrei.com.

Thank you for choosing Clearwater and we look forward to serving you in 2011.

Sincerely,

Investor Services
Clearwater Real Estate Investments
(866) 217-4906 toll-free
InvestorServices@clearwaterrei.com

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

January 25, 2012

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

Dear Mr. Boling,

We have received your latest email dated 12/20/2011. We have again notified your broker dealer and registered representative of your questions so that they can be of further assistance to you in answering many of your questions. Please find the following additional information in response to your latest email.

Audited Financial Statement
The Audited Financials were provided as soon as they were made available by the third party accounting firm, Moss Adams. The time it takes the third party accounting firm is beyond the control of the Note Program.

Liquidity
The objective of the 2008 Note Program, LLC continues to be the return the principal investment and interest payments to each investor. The Note Program has a duty to all investors to make reasonable business decisions and protect its assets to reach this objective and as such cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders.

The 2008 Note Program, must continue to restrict its interest payments and hold all liquidation requests until such time that the liquidation requests will not be at parity with the Company's overall indebtedness to all of its Note Holders.

We continue to work diligently, to ease the current financial restrictions and will continue to honor the order in which your liquidation request was received. We appreciate your continued patience and understanding and will let you know as soon as we are able to once again honor the liquidation requests.

RE Capital
We have been in contact with RE Capital and are hopeful of receiving correspondence from them in the next 30 days.

Sincerely,

Clearwater 2008 Note Program, LLC
(866) 217-4906
InvestorServices@Clearwaterrei.com

Cc: Marna Hart (Independent Financial Group)

EXHIBIT 15

Mark Boling

From:	Ross Farris [ross@clearwaterrei.com]
Sent:	Thursday, December 01, 2011 2:57 PM
To:	maboling@earthlink.net
Cc:	mhart@marnahart.com
Subject:	Clearwater 2008 Note Program
Attachments:	Cover Ltr_2010 Year End Update_08 NP.PDF; 3rd Supplement_Clearwater 2008 Note Program.pdf; Clearwater 2008 Note Program 2nd Supplement dated June 30, 2009.pdf

Dear Mr. Boling,

We are in receipt of your email dated November 10, 2011 and provide you with the following responses to your questions.

Appraisals - The investor notices you have received to date contain the most up to date appraised values that Clearwater 2008 Note Program, LLC ("CREI") has. As new appraisals are received CREI will continue to update the investors.

Coastal Gables - CREI was the successful bidder at the foreclosure sale and is now the owner of the Costal Gables real property, excluding Lots 5 and 6 which are currently under the protection of a bankruptcy stay. CREI completed commercially reasonable due diligence on the Coastal Gables property and is in the process of pursuing any additional recourse it may have against the borrower.

Bay St. Louis, Mississippi - The most recent Bay St. Louis, Mississippi property appraisal indicates that the 131 residential duplex lots are valued at $9,600 per lot and the 14 acres of the Waveland, Mississippi property was valued at $640,000.

Year End Reports - Our records indicate that CREI mailed the 2010 year end status report to you on March 24, 2010 and that you were also notified in March of 2010 that the audited financials were available to you on May 1, 2010, through the investors' online portal or via request. A copy of this notice is attached. Please let us know if we need to update your contact information so that we can ensure that you are receiving updates at your most recent address.

RE Capital Investments, LLC (Guarantor) - Attached is the 3rd supplement to the PPM that was mailed to you in the first week of Feb 2010 and was received by Clearwater a couple weeks prior to it being mailed to the Noteholders which provides the financial information for the Guarantor. CREI continues to request the final 2010 financial statement from RE Capital and will make it available upon receipt. Also, the attached 2nd supplement previously provided to you provides information regarding officers of the Company and RE Capital Investments.

Liquidity - The objective of the 2008 Note Program continues to be the return of the principal investment and interest payments to each Note Holder. The Note Program has a duty to ALL Note Holders to make reasonable business decisions and protect its assets to reach this objective and as such cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders. The Note Program, must continue to restrict its interest payments and hold all liquidation requests until such time that the liquidation requests will not be at parity with the Company's overall indebtedness to all of its Note Holders. We continue to work diligently, to ease the current financial restrictions and will continue to honor the order in which your liquidation request was received. We appreciate your continued patience and understanding and will let you know as soon as we are able to once again honor the liquidation requests.

We have Cc'd your registered representative Marna Hart to this email as another valuable resource to you to answer questions you may have regarding the Note Program. As always your questions are welcomed and we hope this response has been beneficial to you.

Kind regards,

Ross Farris
Director of Marketing & Investor Relations

Clearwater Real Estate Investments
(208) 639-4486 office
(866) 217-4906 toll-free
(208) 939-1431 fax

Please consider the environment before printing this email.

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply mail and destroy all copies and the original message. This material does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

THIRD SUPPLEMENT TO

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

CLEARWATER 2008 NOTE PROGRAM, LLC
$20,000,000 9.0% Notes
(Subject to increase to $40,000,000)

Minimum Investment: $50,000
Minimum Offering Amount: $1,000,000
Maximum Offering Amount: $20,000,000 (Subject to increase to $40,000,000)

Dated: January 20, 2010

This Third Supplement (the "Third Supplement") is designed to update, through January 20, 2010, the information previously provided in the Confidential Private Placement Memorandum dated August 29, 2008 (the "Memorandum"), which described the Offering by Clearwater 2008 Note Program, LLC (the "Company") of up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015, subject to increase to $40,000,000, the First Supplement to the Memorandum dated October 3, 2008 (the "First Supplement"), and the Second Supplement to the Memorandum dated June 16, 2009 (the "Second Supplement") (as so supplemented, with all Exhibits to the Memorandum, the First Supplement and the Second Supplement, the "Offering Memorandum"). Capitalized terms used herein without definition shall have the meaning ascribed to them in the Offering Memorandum.

This Third Supplement is being furnished for your information on a confidential basis so that you may consider an investment in the Notes described in the Offering Memorandum and herein and should be read together with the Offering Memorandum. This Third Supplement is not to be reproduced or used for any other purpose. No person has been authorized to make any statement concerning the Offering other than as set forth in the Offering Memorandum and herein, and any such statement, if made, should not be relied upon. The Notes will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), or any other securities laws. Notes will be offered for investment purposes only pursuant to exemptions from the registration provisions provided under Regulation D of the Securities Act. There will be no public market for the Notes. There are significant risks associated with the Offering. See the Section entitled "Risk Factors" in the Offering Memorandum, as supplemented by this Third Supplement.

The Offering Memorandum, as supplemented by this Third Supplement, is not an offer to sell, or a solicitation of an offer to purchase Notes, and no Notes shall be offered or sold to any person in any jurisdiction in which such offer, solicitation, purchase or sale would be unlawful under the securities laws of such jurisdiction. The Offering Memorandum, as supplemented by this Third Supplement, has not been filed with the United States Securities and Exchange Commission ("SEC"), any securities administrator under state securities laws or any other governmental or self-regulatory authority. None of the SEC, any state securities administrators or governmental or self-regulatory authorities has passed on the merits of the Offering or the adequacy of the Offering Memorandum as supplemented by this Third Supplement. Any representation to the contrary is unlawful.

This Third Supplement describes updated information and should be read in its entirety by each investor.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

OFFERING MEMORANDUM

The following information described in the Offering Memorandum is hereby updated, modified and supplemented as follows:

(a) The Manager of the Company has elected to extend the Offering Termination Date to December 31, 2010, and in connection with this extension, is increasing the Maximum Offering Amount of the Notes to $21,900,000.

(b) The Balance Sheet of RE Capital Investments, LLC (the "Guarantor") as of December 31, 2009 is attached to this Third Supplement as Exhibit A. Although the Guarantor's net worth of approximately $53.4 million is lower than the net worth of $54 million it has covenanted to maintain under the Guaranty based on a Maximum Offering Amount of $20,000,000, in the event that the increased Maximum Offering Amount of $21,900,000 is attained, the Guarantor's net worth does provide a principal coverage ratio of: (a) 1.2x, if a portion of the Guarantor's net worth is reserved to provide 1.5x coverage over principal amounts outstanding under the notes issued by Clearwater 2007 Note Program, LLC (the "2007 Notes Program") (accounting for liquidations of $2,000,000 in principal amount of notes issued by the 2007 Notes Program as of December 31, 2009, with $18,000,000 remaining outstanding), and (b) 2.44x, if this reserve is not made (the Guarantor is not required to make this reserve).

(c) As of the date of this Third Supplement, the Company has added a fourth loan and a fifth loan to its portfolio using proceeds of the Offering. Certain of the terms of those loans are as follows:

Property:	Coastal Gables Horizontal Development	Coastal Gables Vertical Development
Location:	Bay St. Louis, MS	Bay St. Louis, MS
Loan Amount:	$1,525,000	$2,700,000
Loan Origination Date:	June 8, 2009	September 28, 2009
Appraised Value:	$3,197,000	$4,176,000* (As-completed)
Loan to Value (LTV):	48%	65%
Interest Rate:	14%	14%
Loan Fees:	Origination (4.0%); Exit (4%)	Origination (5.5%); Exit (4%)
Term:	12 Months	9 Months

(d) The sentence in the paragraph under the heading "Liquidity; Callability" within the section entitled **"DESCRIPTION OF THE NOTES"** on pages 19 and 20 of the Memorandum which reads "Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company" is deleted in its entirety and is replaced with the following:

> Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount and which have been outstanding for a minimum of 12 months may be called by the Noteholders upon not less than 90 days written notice to the Company. The 12 month-minimum holding restriction only applies to Notes purchased on or after January 1, 2010.

The information in this Third Supplement supersedes any information to the contrary provided in the Offering Memorandum.

(e) The Company has terminated its managing broker-dealer agreement with Select Capital Corporation, or Select, subject to the continuing rights and obligations of the Company and Select surviving termination of the agreement. Following the termination, the Company engaged Richfield Orion International, Inc., a member of FINRA, or Richfield Orion, to provide managing broker-dealer services on the same terms and conditions as it had engaged Select under the previous managing broker-dealer agreement. Selling compensation will be payable to Richfield Orion in the same manner and under the same conditions as such amounts would have been payable to Select. The Memorandum, including the sections entitled "Offering Summary - Plan of Distribution," "Plan of Distribution," "Glossary" and the footnotes to the commissions table and use of proceeds table, is hereby modified to reflect the replacement of Select with Richfield Orion.

SUPPLEMENTAL INFORMATION - The Private Placement Memorandum for the Offering of Notes consists of this sticker, the Memorandum dated August 29, 2008, the First Supplement to the Memorandum dated October 3, 2008, the Second Supplement dated June 16, 2009, and this Third Supplement dated January 20, 2010, which supplements, modifies, and supersedes some of the information contained in the Memorandum, the First Supplement and the Second Supplement.

EXHIBIT A

10:46 AM
01/06/10
Accrual Basis

RE Capital Investments, LLC
Balance Sheet
As of December 31, 2009

	Dec 31, 09	
ASSETS		
Current Assets		
Checking/Savings		
Bank of America Checking - 357		28,076.68
Total Checking/Savings		28,076.68
Total Current Assets		28,076.68
Fixed Assets		
Long Term Assets		
Investments - Partnerships	25,500,000.00	
Land Investments (net of 3rd pa	2,000,000.00	
Total Long Term Assets		27,500,000.00
Total Fixed Assets		27,500,000.00
Other Assets		
Investment		
CCS Trop-215, LLC	1,600,000.00	
Clearwater REI (Star)	3,375,000.00	
Horseshoe Bend - 30 Acres Comme	5,700,000.00	
Horseshoe Bend 400 (Program 1)	6,400,000.00	
ICP - Serene Meadows (20%)	1,600,000.00	
New Meadows	6,400,000.00	
Silver Mountain LLC (30%)	480,000.00	
WhiteCloud / New Meadow (62%)	1,984,000.00	
Total Investment		27,539,000.00
Note Receivables		
Clearwater - Bunker Hill	436,831.04	
Clearwater - MAC	73,500.00	
Clearwater Lodging		
Additional Capital Interest	25,000.00	
Initial Capital Interest	400,000.00	
Clearwater Lodging - Other	1,540,000.00	
Total Clearwater Lodging	1,965,000.00	
Clearwater REI LLC	458,763.00	
Cude-Barnett	80,000.00	
Heritage Lands LLC -Future Inte	342,357.96	
Horseshoe Bend - 3200 Acres	465,209.16	
Idaho Capital Partners LLC	400,040.00	
Real Seed Capital	225.00	
Silver Mountain LLC	300,000.00	
Trop-215 Developer LLC	485,171.17	
Total Note Receivables		5,007,097.33
Total Other Assets		32,546,097.33
TOTAL ASSETS		60,074,174.01
LIABILITIES & EQUITY		
Liabilities		
Long Term Liabilities		
Notes Payable		
Clearwater REI (Star)	2,335,000.00	
DH	300,000.00	
Diamond B Asset Management	554,557.19	
Heritage Lands LLC	2,530,000.00	
Interest Payable	46,763.00	
McCall Real Estate	25,000.00	
Terron Investments Inc.	600,000.00	
TH	300,000.00	
Total Notes Payable		6,691,320.19
Total Long Term Liabilities		6,691,320.19
Total Liabilities		6,691,320.19
Equity		
Land Equity		18,540,000.00
Partnership Equity		41,244,000.00
Retained Earnings		-339,478.14
Net Income		-6,061,668.04
Total Equity		53,382,853.82
TOTAL LIABILITIES & EQUITY		60,074,174.01

EXHIBIT 16

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

January 12, 2012

****IMPORTANT PLEASE READ****

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

RE: 2011 LIQUIDATION NOTIFICATION
Clearwater 2008 Note Program, LLC

Dear Noteholder,

This correspondence is being sent to you in connection with your request to liquidate your Note held by the Clearwater 2008 Note Program ("Note Program") in the 2011 liquidation year.

In our most recent correspondence and more specifically the "Notice to Noteholder's" letter dated 10/26/2011, you were notified of the need to modify the interest distributions due to cash flow and liquidity concerns within the Note Program.

In light of these cash flow and liquidity concerns and after careful consideration, the Manager has determined that in the best interest of the Note Program's long-term preservation and continuity, the Note Program regrettably must postpone all 2011 liquidation requests until further notice.

This difficult decision has been made due to multiple factors including, the uncertainty of the capital markets, a borrowers' delay in the refinance of underlying asset in the Note Program and the Note Program's capital needs for the upcoming year. While we cannot say exactly when the liquidations will be reinstated, we can assure you that your priority date will be maintained and as soon as management deems the program to be in a position to reinstate the liquidations you will be liquidated according to your original priority date.

We are grateful for your investment in the Note Program and although we would like nothing more than to accommodate liquidation requests at this time, we cannot since doing so would place the future stability of the Note Program at risk and we cannot jeopardize the whole in favor of a few. We are requesting your patience as we work through this challenge.

We understand the impact this has on you as a Noteholder and we want to assure you that our primary focus is to preserve and return your valued principal. Your patience as we work through this difficult real estate economy is greatly appreciated.

If you have any questions regarding this correspondence, please send us an email at InvestorServices@ClearwaterREI.com and we will respond in a timely manner.

Sincerely,

Investor Services
Clearwater Real Estate Investments
(866) 217-4906 toll-free
InvestorServices@clearwaterrei.com

EXHIBIT 17

Clearwater Real Estate Investments
1300 E State Street, Ste 103
Eagle, Idaho 83616
(866) 217-4906

CLEARWATER
REAL ESTATE INVESTMENTS

January 31, 2012

****IMPORTANT PLEASE READ****

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

RE: CLEARWATER 2008 NOTE PROGRAM

Dear Noteholder:

In light of the challenges the Clearwater 2008 Note Program, LLC, (the "Note Program") has faced over the past year and in an effort to provide more regular communication to our valued Noteholders we are providing the enclosed update. This update is designed to inform you not only as to updates on the program but also of ideas Management has been working on to improve your position as it relates to your security in the Note Program. The enclosed update covers information on the following topics.

1) Clearwater Update: Our Commitment
2) Real Estate Market Update: Stabilization
3) Asset Update: Florence, AZ
4) Asset Updates: Missouri, Mississippi, and Washington
5) Investment Update

In addition, and as a follow-up to our most recent correspondence, and more specifically the "Notice to Noteholders" letter dated 10/26/2011, in which you may recall the necessary modifications implemented to the interest distributions through January of this year due to delayed anticipated liquidity events. The reinstatement of the interest distributions was dependent upon those liquidity events and to date, the Note Program has not experienced any such events.

Similar to December and January payments, the February payment will be 25% of the monthly interest distributed and 75% of the interest will accrue and compound for the benefit of the Noteholders in accordance with Section 3 of the Note dated August 29, 2008.

IMPORTANT: As of January 1, 2012 all Noteholders previously participating in the Interest Reinvestment Program have been converted to receive monthly distributions of their interest. This change will permit only the interest reinvested and/or distributed to be included on your 1099-INT for the upcoming 2012 tax year. Please note, this change will in no way affect the interest rate of your note. As of January 1, 2012 any unpaid interest will continue to accrue and compound monthly at the annual rate of 9.0%.

If you have any questions regarding this correspondence, please send us an email at InvestorServices@ClearwaterREI.com and we will respond in a timely manner.

Thank you for your attention to this important information concerning your investment.

Sincerely,

Clearwater 2008 Note Program

JAN 2012

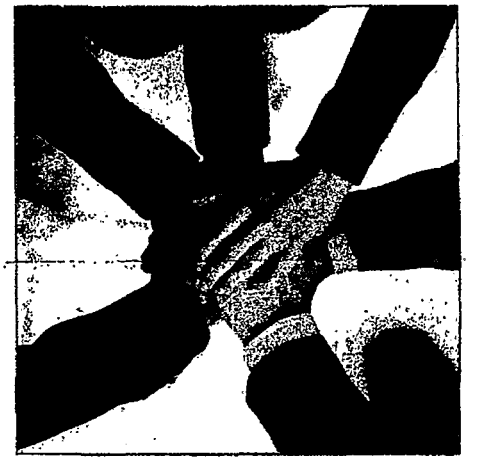
January Update

Clearwater 2008 Note Program, LLC

» Clearwater Update: Our Commitment

After over four years in business Clearwater is still here amidst a devastating time for our industry. According to the Financial Industry Regulatory Authority (FINRA) over 500 member firms have fallen by the wayside in that same time period.

Despite this challenging environment we would like to reaffirm our commitment to you. We want to assure you that our primary focus is to provide the highest possible return in today's environment. Your continued patience as we work through these challenges is greatly appreciated.



» Real Estate Market Update: Stabilization

At Clearwater we strive to keep abreast of the latest real estate data and trends. Below are some of the recent month's data.

Real Estate values have fallen dramatically nationwide and the banking industry has been shaken to its foundation. However, many economists are now anticipating a gradual real estate stabilization.

Any real estate stabilization will be rooted in the growth of the overall economy; some recent data would seem to indicate that US economic conditions are improving.

1) **The unemployment rate fell from 9.8% in November 2010 to 8.6% in November 2011.**

2) **GDP is expected to grow in 2012.**

There has also been some promising news in the housing market. Housing is a leading indicator for the types of assets in the Note Program because they are development properties.

[Joseph LaVorgna, chief U.S. economist for Deutsche Bank, said "There has been a noticeable uptrend in several key housing metrics in the back half of this year, so even though we are downplaying the November data to some degree, it does appear that residential construction is finally beginning to rise from its post-recession lows..."]

Source: CNNMoney (12/20/2011) "Home Building Spikes Higher" http://money.cnn.com/2011/12/20/real_estate/construction_building_permits/index.htm

Financial services company Credit Suisse is telling investors and asset managers to expect a bumpy stabilization in U.S. residential home prices in 2012.

["U.S. homes now appear fairly valued compared with median family income," said Martin Berhard, Credit Suisse global real estate analyst. "Furthermore, the interest rate environment is likely to remain accommodative for the foreseeable future. We therefore expect housing demand to recover gradually in 2012."]

Source: HousingWire (12/14/2011) "Credit Suisse expects home prices to stabilize in 2012" http://www.housingwire.com/2011/12/14/credit-suisse-expects-home-prices-to-stabilize-in-2012

Contents

Clearwater Real Estate Investments
1300 E State Street, Ste 103, Eagle, Idaho 83616 | Ph: (866) 217-4906 | InvestorServices@ClearwaterREI.com

» Asset Update: Florence, AZ

The Florence Hospital loan continues to be in default and in a work out situation. However, we are pleased to report that the hospital is currently in negotiations with a healthcare real estate investment trust that is planning on refinancing the 08 Note Program's position.

» Asset Updates: Missouri, Mississippi, and Washington

Raymore, Missouri
This asset has been fully leased and is performing well. All 18 units are currently leased at an average rate of $992 per month. The property generated a positive Net Operating Income for 2011 and we expect that this level of performance will continue and gradually improve. There is some pending legal action with the borrowers that is prohibiting the liquidation of this asset. We are hopeful that this will be resolved by the end of 2012.

Bay St. Louis, Mississippi
This asset consists of a residential subdivision and 14 additional acres that the 08 Note Program secured as additional collateral. Both assets have now been removed from bankruptcy and the foreclosures have been completed, with the exception of 2 parcels which the Note Program is attempting to remove from a bankruptcy stay. Both properties are being listed by a regional brokerage firm at their appraised values. We expect to begin entertaining offers in the coming months.

Kenmore, Washington
The Trail Walk Condominium first mortgage has been repaid. However, a deficiency remains due to the 08 Note Program but we continue to pursue our rights under the second mortgage. We are hopeful to come to a solution on this property in the coming year.

» Investment Update

The economic crisis has placed a heavy burden on the Noteholders and Management has been working diligently to alleviate this pressure.

As a Noteholder, you purchased an interest in an unsecured General Promissory Note ("General Note"). The money raised from the General Note was then redeployed by the Note Program into five secured promissory notes.

As the picture (below) indicates, the Noteholders are currently unsecured with the Note Program holding the actual secured interest in the collateral; however, Management has been working on creative ideas in an effort to better position its Noteholders as it relates to your security in the underlying collateral.

Rest assured, your investment has always included 1st position financing and includes a principal only corporate guaranty. This illustration merely illustrates the unsecured interest in the collateral which we would like to improve upon.

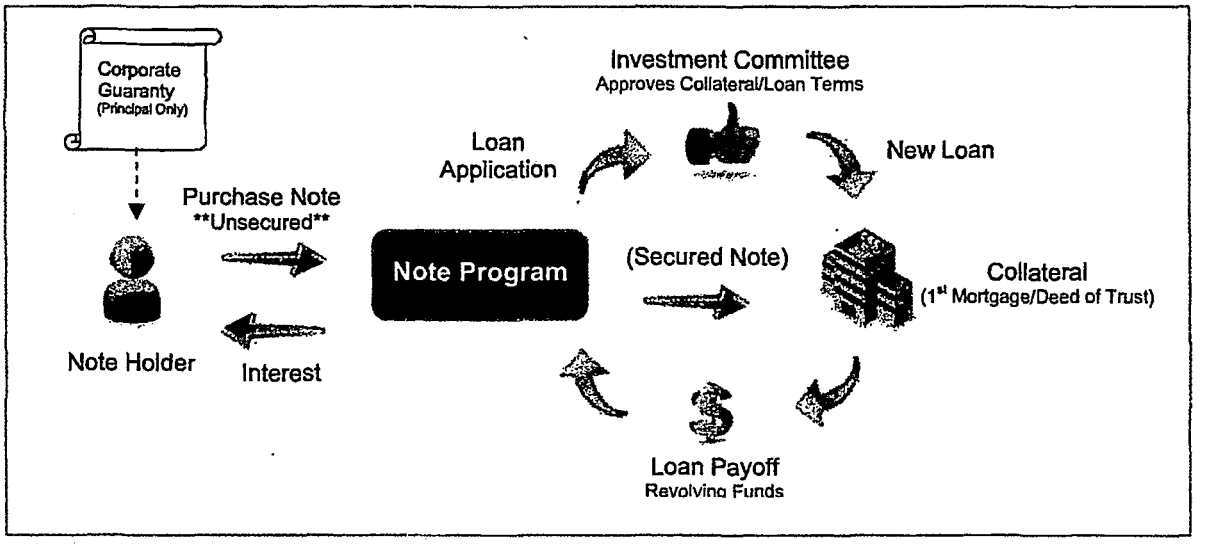


EXHIBIT 18

000221

CLEARWATER
REAL ESTATE INVESTMENTS

Clearwater Real Estate Investments
1300 E State Street, Ste 103
Eagle, ID 83616

October 1 - December 31, 2011

QUARTERLY STATEMENT

Clearwater 2008 Note Program, LLC

CERTIFICATE NUMBER	08-470
CURRENT BALANCE	50,000.00

804 **********MIXED AADC 836

Mark Boling
21986 CAYUGA LN
LAKE FOREST CA 92630-2303

Have you signed up for E-Statements
»It's as easy as 1, 2, 3...
1) Go to www.Clearwaterrei.com
2) Click on "Investors"
3) Follow Online Instructions

CUSTOMER SERVICE

INVESTOR SERVICES:	Toll-free (866) 217-4906	YOUR ADVISOR:	Marna Hart (949) 859-7127 Independent Financial Group
EMAIL:	InvestorServices@clearwaterrei.com		
WEBSITE:	www.clearwaterrei.com		

INVESTMENT INFORMATION

OWNER:	Mark Boling		
CERTIFICATE NUMBER:	08-470	CUSTODIAN ACCOUNT NUMBER:	n/a
TYPE (QUALIFIED? Y/N):	no	EFFECTIVE DATE:	02/27/10

INVESTMENT ACTIVITY

	Previous Activity	Current Quarter	Investment To Date
Initial Investment	50,000.00	-	50,000.00
Additional Investments	-	-	-
Reinvested Interest	-	-	-
Accrued Interest	-	470.16	470.16
Ending Balance	50,000.00	-	50,000.00
Interest Payments Disbursed	6,775.00	656.25	7,431.25

COLLATERAL SUMMARY

Clearwater 2008 Note Program, LLC

Total Outstanding Principal Balance of Master Promissory Note to Investors	Total Appraised Values of Collateral
$21,810,000	$25,120,000

Collateral valuations dated September 15, 2010, January 19, 2011 and September 21,2011.

Questions about this report
This report contains important information about your investment. We encourage you to review the details in this report. If you do not understand any of the information in this report, we encourage you to contact us by phone (866) 217-4906 or email at InvestorServices@clearwaterrei.com 010222

Clearwater REI, LLC, et al. v. Boling, Case No. CV OC 1208669

CERTIFICATE OF SERVICE

I am a resident of Orange County, State of California, over the age of eighteen (18) years, and not a party to the above-entitled action.

I certify on June 25, 2012, I served the following document(s) in this action:

COUNTERCLAIM AND THIRD PARTY COMPLAINT FOR VIOLATIONS OF THE I.C.P.A. AND BREACH OF GUARANTY

by sending a true copy thereof by **ELECTRONIC SERVICE** pursuant to *I.R.C.P*, Rule 5 (b) (E) addressed to the party(s) served as follows:

Rebecca A. Rainey – rar@raineylawoffice.com

Attorney for Plaintiffs and Cross-Defendants Clearwater REI, LLC, Clearwater Real Estate Investments, LLC aka Clearwater Real Estate Investments, RE Capital Investments, LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak and Rob Ruebel.

The transmission of said document(s) to each party served was reported as complete and without error within a reasonable time after said transmission.

Dated: June 25, 2012

Patricia Mocella

PATRICIA MOCELLA

Bail Tour ORB 8-20-12

ORIGINAL

NO. _____
A.M. _____ FILED P.M. 5:00

AUG 17 2012

CHRISTOPHER D. RICH, Clerk
By CHARLOTTE WATSON
DEPUTY

Rebecca A. Rainey, ISB No. 7525
RAINEY LAW OFFICE
910 W. Main St. Ste. 258
Boise, ID 83702
Phone: (208) 258-2061
Facsimile: (208) 473-2952
rar@raineylawoffice.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, an Idaho limited liability company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONDAL D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; RON RUEBEL, an individual; RE CAPITAL INVESTMENTS, LLC, a Delaware limited liability company,

Plaintiffs/Counterdefendants,

vs.

MARK BOLING, an individual,

Defendant/Counterclaimant.

MARK BOLING, an individual,

Third Party Plaintiff,

vs.

CLEARWATER REAL ESTATE INVESTMENTS, LLC, a Delaware limited liability company

Third Party Defendant.

Case No.: CV OC 12-08669

MOTION TO STAY ARBITRATION

2

COME NOW, the above named Plaintiffs/Petitioners,[1] Clearwater REI, LLC, Barton Cole Cochran, an individual; Chad James Hansen, an individual; Ronald D. Meyer, an individual; Christopher J. Benak, an individual; and Rob Ruebel, an individual, by and through the undersigned counsel of record, and hereby file the following Motion to Stay Arbitration under Idaho Code § 7-902(b), this motion is supported by a Memorandum in Support of Motion to Stay Arbitration filed contemporaneously herewith.

DATED this 17th day of August, 2012.

RAINEY LAW OFFICE

Rebecca A. Rainey – Of the Firm
Attorneys for
Plaintiff/Counterdefendants

[1] Plaintiff RE Capital filed for Chapter 7 bankruptcy on July 6, 2012.

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2012, I caused to be served a copy of the foregoing **MOTION TO STAY ARBITRATION** on the following, in the manner indicated below:

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

( ) Via U.S. Mail
( ) Via Facsimile – 949-588-7078
( ) Via Overnight Mail
( ) Via Hand Delivery
(X) Via Email

Rebecca A. Rainey

ORIGINAL

NO. _____
A.M. _____ FILED P.M. 5:00

AUG 17 2012

CHRISTOPHER D. RICH, Clerk
By CHARLOTTE WATSON
DEPUTY

Rebecca A. Rainey, ISB No. 7525
RAINEY LAW OFFICE
910 W. Main St. Ste. 258
Boise, ID 83702
Phone: (208) 258-2061
Facsimile: (208) 473-2952
rar@raineylawoffice.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, an Idaho limited liability company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONDAL D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; RON RUEBEL, an individual; RE CAPITAL INVESTMENTS, LLC, a Delaware limited liability company,

Plaintiffs/Counterdefendants,

vs.

MARK BOLING, an individual,

Defendant/Counterclaimant.

MARK BOLING, an individual,

Third Party Plaintiff,

vs.

CLEARWATER REAL ESTATE INVESTMENTS, LLC, a Delaware limited liability company

Third Party Defendant.

Case No.: CV OC 12-08669

MEMORANDUM IN SUPPORT OF MOTION TO STAY ARBITRATION

COME NOW, the above named Plaintiffs/Petitioners,[1] Clearwater REI, LLC; Barton Cole Cochran, an individual; Chad James Hansen, an individual; Ronald D. Meyer, an individual; Christopher J. Benak, an individual; and Rob Ruebel, an individual, by and through the undersigned counsel of record, and hereby file the following memorandum in support of their Motion to Stay Arbitration under Idaho Code § 7-902(b):

I. INTRODUCTION

Plaintiffs/Petitioners seek an order staying arbitration proceedings against them on the grounds that they are not parties to the Subscription Agreement containing the arbitration clause. Accordingly, under Idaho law, they cannot be compelled to arbitration.

II. FACTS

On February 12, 2010, Defendant Boling executed a Subscription Agreement with Clearwater 2008 Note Program, LLC, an Idaho limited liability company. The Subscription Agreement was signed by Defendant Boling and Clearwater 2008 Note Program, LLC, an Idaho limited liability company, by and through its agent, Clearwater REI, LLC, an Idaho limited liability company. *See*, Complaint and Application for Stay, Exhibit A.

The Subscription Agreement included an arbitration clause. Boling invoked the arbitration clause by filing a demand for arbitration with the American Arbitration Association on February 15, 2012. The demand properly named Clearwater 2008 Note Program, LLC, the entity that is a party to the Subscription Agreement, and improperly named several non-signatories including, but not limited to, plaintiffs herein: Clearwater REI, LLC; RE Capital, LLC, [a Delaware limited liability company]; Barton Cole Cochran, an individual; Chad James Hansen, an individual; Ronald D. Meyer, an individual; Christopher J. Benak, an individual; and

[1] Plaintiff RE Capital filed for Chapter 7 bankruptcy on July 6, 2012.

Rob Ruebel, an individual. *See*, Complaint and Application for Stay, Exhibit B. Because none of the Plaintiffs are parties to the Subscription Agreement, all plaintiffs are entitled to orders staying the arbitration as to them.

III. ARGUMENT

A. Standard of Review

The question of arbitrability is a question of law properly decided by the court. *Accomazzo v. Cedu Educ. Servs.*, 135 Idaho 145, 147, 15 P.3d 1153, 1155 (2000) (citing *Local 2-652 v. EG&G Idaho, Inc.*, 115 Idaho 671, 674, 769 P.2d 548, 551 (1989) and *AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643, 89 L. Ed. 2d 648, 106 S. Ct. 1415 (1986)). The determinations regarding whether the parties were bound to arbitrate, the arbitrability of issues, and decisions surrounding motions to stay arbitration are within the discretion of the trial court. *Id.* at 148, 15 P.3d at 1156.

B. Idaho's Uniform Arbitration Act

Idaho's Uniform Arbitration Act, Idaho Code § 7-901, *et. seq.*, provides for special proceedings related to the remedy of arbitration. Pursuant to that act, litigants can invoke the jurisdiction of a state court for the limited purposes of determining arbitrability and other specific issues authorized by the Act. With respect to determining issues of arbitrability, the act provides:

> On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

Idaho Code § 7-902 (b). Accordingly, under Idaho's arbitration act, this Court is required to summarily try the issue of arbitrability and, if it is found that there is no agreement to arbitrate

between Boling and plaintiffs, shall stay the arbitration as to each of the named plaintiffs.

C. Where A Party Has Not Agreed to Arbitrate, Arbitration Should Be Stayed for that Party

Arbitration is strictly a matter of contract law. *See Storey Constr., Inc. v. Hanks*, 148 Idaho 401, 407, 224 P.3d 468, 474 (2009). If a contract is unambiguous and the persons at issue are not named parties to the contract, those persons are not subject to the arbitration agreement. *Lewis v. Cedu Educ. Servs., Inc.*, 135 Idaho 139, 15 P.3d 1147 (2000), *Rath v. Managed Health Network, Inc.*, 123 Idaho 30, 844 P.2d 12 (1992). Thus, where one is not a party to a contract, one cannot be forced to arbitrate under an arbitration clause of that contract. *Id.*

In this case, the undisputed facts are that the only parties to the Subscription Agreement are Clearwater 2008 Note Program, LLC and Boling. There is no ambiguity within the Subscription Agreement that suggests that non-parties can be compelled to arbitrate. Indeed, the arbitration clause specifically states "BY EXECUTING THIS AGREEMENT YOU ARE AGREEING TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION...." This language makes it clear that the agreement to arbitrate is made "by executing [the Subscription Agreement]." Because plaintiffs have not executed the Subscription Agreement, plaintiffs have not agreed to submit any disputes to arbitration. Thus, under Idaho law, the plaintiffs are not bound by the arbitration clause in the Subscription Agreement and cannot, therefore, be forced to arbitration.

IV. CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that this Court enter an order staying Boling from proceeding with arbitration against them.

DATED this 17th day of August, 2012.

RAINEY LAW OFFICE

Rebecca A. Rainey – Of the Firm
Attorneys for
Plaintiff/Counterdefendants

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2012, I caused to be served a copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO STAY ARBITRATION** on the following, in the manner indicated below:

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

( ) Via U.S. Mail
( ) Via Facsimile – 949-588-7078
( ) Via Overnight Mail
( ) Via Hand Delivery
(X) Via Email

Rebecca A. Rainey

RECEIVED
AUG 23 2012
Ada County Clerk

A.M. 1032 FILED P.M.
AUG 23 2012
CHRISTOPHER D. RICH, Clerk
By KATHY BIEHL
Deputy

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630
(949) 588-9222
(949) 588-7078 [fax]
maboling@earthlink.net
Defendant/Counter-Claimant/Third Party Plaintiff, in pro per

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT

FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, et al.
Plaintiffs/Counter-Defendants,
vs.
MARK BOLING,
Defendant/Counter-Claimant

MARK BOLING
Third Party Plaintiff,
vs.
CLEARWATER REAL ESTATE INVESTMENTS, LLC.,

Third Party Defendant.

Case No.: CV OC 1208669

DEFENDANT/COUNTER-CLAIMANT'S OPPOSITION TO MOTION TO STAY ARBITRATION

Date: September 12, 2012
Time: 3:00 p.m.

[Request for Telephonic Appearance – *I.R.C.P.*, Rule 7 (b) (4), if Oral Argument Granted]

/////

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

California Statutes

Federal Cases

California Cases

INTRODUCTION AND SUMMARY OF ARGUMENT

This action arises out of conduct involving the purchase and performance of a real estate investment with Defendant/Counter-Claimant Mark Boling ("Boling") by individuals employees and affiliated business entities of Clearwater Real Estate Investments. All Plaintiffs have challenged Boling's demand to arbitrate his claims for Breach of Guaranty against Plaintiff RE Capital Investments, LLC and violations of the Idaho Consumer Protection Act, I.C. §§ 48-601 – 48-619 ("ICPA") against all nonsignatory Plaintiffs under the agreement.

The right to arbitrate Boling's Breach of Guaranty claim against the nonsignatory Plaintiff RE Capital Investments, LLC exists because the Guaranty is part of the entire agreement. Thus, the guarantor, Plaintiff RE Capital Investments, LLC, is bound by the arbitration clause in the entire agreement. [1]

The right to arbitrate Boling's ICPA claims against the nonsignatory Plaintiffs exists because 1) Plaintiffs' actionable conduct is inextricably interwoven with the formation and performance of the entire agreement, 2) a benefit was conferred on the nonsignatory Plaintiff(s) as a result of the agreement, making the nonsignatory Plaintiff(s) a third party beneficiary of the arbitration agreement, 3) a preexisting relationship existed between the nonsignatory Plaintiff(s) and Clearwater 2008 Note Program, LLC (the "Company"), making it equitable to compel the nonsignatory Plaintiff(s) to also be bound by the arbitration clause in the entire agreement, and/or 4) mutuality of remedy under the arbitration clause makes it equitable to compel the

[1] Plaintiffs have represented in this action that the Guarantor, RE Capital has filed bankruptcy on July 7, 2012. Therefore, this Breach of Guaranty claim for relief is stayed during the pendency of said purported bankruptcy action.

nonsignatory Plaintiff(s) to also be bound by the arbitration clause in the entire agreement.

STATEMENT OF FACTS[2]

A. Private Placement Memorandum, Supplements One and Two Thereto and Guaranty

On or about February 4, 2010, Boling received an initial package from Rob Ruebel, Regional Vice-President of Sales of Clearwater Real Estate Investments consisting of A) a bound Confidential Private Placement Memorandum Book # 08Note-A238 dated August 29, 2008 (Exh. 1), which included, inter alia, the Private Placement Memorandum (Exh. 1A ,"PPM"), a Guaranty (Exh. 2), and Supplements One and Two to the PPM (collectively, Exh. 3), and B) a cover letter dated February 1, 2010 and miscellaneous sheets about Clearwater Real Estate Investments (collectively, Exh. 4). Boling did not receive a copy of the Note dated August 29, 2008, the Third Supplement to the PPM dated January 20, 2010, or the 2009 Year-End Update dated March 19, 2010 until after the submission and acceptance of his Subscription Agreement, *infra*.

The **PPM** sets forth the following:

> Clearwater 2008 Note Program, LLC, an Idaho limited liability company, was organized to offer up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015. The Company will use the proceeds from the offering of the Notes to provide secured financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, an Idaho limited liability company, its Affiliates and other borrowers who satisfy the lending criteria

[2] The statement of facts and all exhibits identified or referenced in this document are taken from the allegations in and exhibits attached to Boling's Counterclaim and Third Party Complaint on file in this action, which Boling requests that the Court take judicial notice of under *I.R.E.* 201 or in Boling's declaration filed herewith.

established by the Company. * * * All loans made by the Company will be collateralized by a first position mortgage or deed of trust, as the case may be. [PPM, Introduction.]

Noteholders may elect, from time to time, to (a) receive monthly distributions of simple interest at the annual rate of 9.0%, or (b) re-invest accrued interest at a compounded annual interest rate of 9.0%. [PPM, Introduction.]

The mailing address of the Company is c/o Clearwater REI, LLC, 1300 E. State Street, Suite 103, Eagle, Idaho 83616. [PPM, Introduction.]

If, after carefully reading the entire Memorandum, obtaining any other information available and being fully satisfied with the results of pre-investment due diligence activities, a prospective Noteholder would like to purchase Notes, a prospective Noteholder should complete and sign the attached Subscription Agreement. The full purchase price for the Notes must be paid by check upon submission of the Subscription Agreement for the Notes. [PPM, p. 3.]

There are various conflicts of interest among the Company, the Manager and their Affiliates. [PPM, p. 5.]

COMPANY'S PRINCIPAL OFFICERS [PPM, p. 17.]: The Investment Committee will include, but not be limited to the following principals:
• Ron Meyer, Chief Development Officer
• Chris Benak, Chief Development Officer
• Don Steeves, National Sales Director & Broker-Dealer Relations
• Bart Cochran, Vice President of Acquisitions & Operations
• Chad Hansen, Vice President of Finance. [PPM, p. 17.]

MANAGER'S KEY MANAGEMENT [PPM, p. 18.]:
• Ron Meyer, Chief Development Officer
• Chris Benak, Chief Development Officer
• Don Steeves, National Sales Director & Broker-Dealer Relations
• Bart Cochran, Vice President Of Acquisitions & Operations
• Chad Hansen, Vice President of Finance

Interest: Noteholders may elect to receive monthly interest payments in an amount equal to 9.0% simple interest on their principal investment. All distributions will paid in arrears on the fifteenth day of each month, beginning with the month following the month in which the Notes are issued. [PPM, p. 19.]
Interest Reinvestment Program (IRP): By giving written notice to the Company of their desire to do so not later than November 30, Noteholders may elect to have their interest reinvested and compounded monthly beginning on the first day of the year immediately following the date on which such notice was received by the Company. Reinvested interest will be compounded at the annual rate of 9.0%. Interest that is reinvested will be added to and considered part of the principal amount of the Note at the end of each calendar month. [PPM, p. 19.]

Liquidity; Callability: Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company. [PPM, pp. 19-20.]

Guaranty: The Notes will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC [PPM, p. 20.] The Guaranty is attached to the PPM as Exhibit D.

Annual Report: Within 120 days after the end of each calendar year, the Company will send to each
Noteholder of record during the previous year: (a) an audited balance sheet for the Company as of the end of such fiscal year and (b) an audited statement of the Company's earnings for such fiscal year, along with a year-end status report. [PPM, p. 24.]

Definitions:
"Company" means Clearwater 2008 Note Program, LLC, an Idaho limited liability company. [PPM, p. 25.]
"Manager" refers to Clearwater REI, LLC. The Manager is sole owner and the initial manager of the Company. [PPM, p. 26.]
"Noteholders" means purchasers of Notes. [PPM, p. 26.]
"Notes" means the $20,000,000 aggregate principal amount of 9.0% notes due December 31, 2015, subject to increase to $40,000,000 at the sole discretion of the Company, which will be obligations of the Company the principal of which will be guaranteed by RE Capital

> Investments, LLC; however, the Notes will not be secured by collateral. [PPM, p. 26.]
>
> "**Event of Default**" refers to the occurrence of any of the following: (a) failure to pay the principal on the Notes when due at maturity, or upon any earlier due date, or upon mandatory redemption at the option of Noteholder, (b) failure to pay any interest on the Notes for ten days after notice of such default to the Company; (c) failure to perform any other covenant for ten days after receipt of written notice specifying the default and requiring the Company to remedy such default; **or** (c) events of insolvency, receivership, conservatorship or reorganization of the Company. [PPM, p. 26.] (Emphasis added.)
> Guarantor's Balance Sheet dated July 31, 2008 – attached Exhibit C to the PPM.

Guaranty dated July 31, 2008 – attached Exhibit D to the PPM, which was signed on behalf of the Guarantor, RE Capital Investments, LLC, by its managing member, Diamond B Asset Management.

The Guaranty states, inter alia:

> "In order to induce each prospective purchaser (each a "Noteholder" and collectively the "Noteholders") of 9% Notes due on December 31, 2015 (each a "Note" and collectively the "Notes) issued by Clearwater 2008 Note Program, LLC (the "Company") to purchase the Notes, the Guarantor hereby unconditionally guarantees the payment of the original principal amount of the Notes as provided therein. This Guaranty shall remain in full force throughout the terms of the Notes."
>
> "Guarantor hereby waives notice of acceptance of this Guaranty and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices to them of default by the Company under the Notes."
>
> "The Guarantor's net worth will at all times during the term of the Guaranty be maintained at $54, 000.000 subject to increase in pro rata up to $78,000,000 if the Company increases the offering of the Notes."

> "Guarantor further agrees, to the extent permitted by law, to pay any costs or expenses, including the reasonable fees of an attorney, incurred by the Noteholders in enforcing this Guaranty."

First Supplement to PPM dated October 3, 2008:

Peter Cooper, Senior Vice-President of Sales will assume the role of Director of Sales and Broker Dealer Relations for Clearwater REI, LLC. Don Steeves, former National Sales Director and Director of Broker Relations, concluded his employment with Clearwater REI, LLC. [1st Suppl., p. 2.]

The four member Investment Committee now consists of current principal members of Clearwater REI, LLC, namely: Ron Meyer, Chris Benak, Bart Cochran and Chad Hansen. No loan will be made by the Company without the prior approval of the Investment Committee. [1st Suppl., p. 3.]

Second Supplement to PPM dated June 30, 2009:

The **RELATIONSHIP** of the Company (Clearwater 2008 Note Program, LLC), the Manager (Clearwater REI, LLC) and the Guarantor (RE Capital Investments, LLC) to each other, and their respective owners, is as follows [2nd Suppl., p.2]:

- RE Capital Investments, LLC owns 55.84% of Clearwater (Real Estate Investments).
  - Ronald D. Meyer owns 100% of Terron Investments, Inc., which owns 50 % of RE Capital Investments, LLC.
  - Christopher J. Benak owns 100% of Diamond B Asset Management, Inc., which owns the other 50% of RE Capital Investments, LLC.
- Barton Cole Cochran 100% of Leap, Inc. which owns 19.58% of Clearwater.
- Chad James Hansen owns 100% of Green Jackets Investments, Inc.,

which owns 19.58% of Clearwater.

Bart Cochran, who was formerly the Company's Vice-President of Acquisitions & Operations, is now the Company's President. Chad Hansen, who was formerly the Company's Vice-President of Finance, is now the Company's Chief Financial Officer. [2nd Suppl., p.2]

Guarantor's Balance Sheet dated December 31, 2008 – attached as Exhibit A to the 2nd Suppl.

B. Subscription Agreement

On February 12, 2010, Boling executed and submitted a Subscription Agreement ("SA") (Exh. 5), and Boling paid the sum of $50,000 pursuant thereto as his personal investment in the Company's Note Program without having previously received a copy of the Note.

Subscription Agreement:

The SA is the offer and agreement of the Boling to purchase $50,000 in principal of 9% Notes to be issued by the Company subject to the terms, conditions, acknowledgments, representations and warranties stated herein and in the PPM, as supplemented from time to time. [SA, p.2.]

RE Capital, LLC agreed to guarantee the repayment of principal under the Notes. [SA, p.3., ¶1]

Pertinent portions of the SA are as follows:

> "I acknowledge that I have received, read and fully understand the Memorandum. I acknowledge that I am basing my decision to invest in Notes on the Memorandum and I have relied only on the information contained in said materials and have not relied upon any representations made by any other person." [SA, p.3., ¶2] (underline added)

"I am purchasing Notes for my own account and for investment purposes only." [SA, p.4, ¶7.]

"This Subscription Agreement shall be construed in accordance with and governed by the laws of the State of Idaho without regard to its choice of law provisions." [SA, p.4, ¶10.]

[**ARBITRATION CLAUSE**]

"[A]ny dispute, controversy or other claim arising under, out of or relating to this Agreement or any of the transactions contemplated hereby, or any amendment thereof, or the breach or interpretation hereof or thereof, shall be determined and settled in binding arbitration in Boise, Idaho, in accordance with applicable Idaho law, and with the rules and procedures of The American Arbitration Association. The prevailing party shall be entitled to an award of its reasonable costs and expenses, including, but not limited to, attorneys' fees, in addition to any other available remedies. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives, and judgment may be entered thereon in any court of competent jurisdiction. BY EXECUTING THIS AGREEMENT, YOU ARE AGREEING TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE SUCH DISPUTES LITIGATED IN A COURT OR JURY TRIAL, AND YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE. BY EXECUTING THIS AGREEMENT, YOU HEREBY CONFIRM THAT YOUR AGREEMENTS TO THIS ARBITRATION PROVISION IS VOLUNTARY." [SA, p.4, ¶11.]

"[T]his Subscription Agreement and the Memorandum, together with all attachments and exhibits thereto, constitute the entire agreement among the parties hereto with respect to the sale of Notes and may be amended, modified or terminated only by a writing executed by all parties." [SA, p.4, ¶13.]

C. Acceptance of Subscription Agreement, Certificate and Note

On or about March 6, 2010, Boling received a cover letter dated March 1, 2010 (Exh. 6), an Acceptance of the Subscription Agreement (Exh. 5), a Certificate with an effective date of February 27, 2010 (Exh. 7), and a Note dated August 29, 2008 (Exh. 8) from Clearwater Real Estate Investments.

Acceptance of Subscription Agreement:

On February 26, 2010, Bart Cochran signed the acceptance of the SA, as the Manager for the Company.

Certificate:

Effective February 27, 2010, Certificate No 08-470 was signed by Bart Cochran as the Manager for the Company and issued to Boling.

Note:

A Note dated August 29, 2008, with the Company as the maker, was signed by Bart Cochran as the sole member for the Manager. No Exhibit A, listing the names of the Noteholders, including Boling, was attached or included with the Note that was delivered to Boling.

Pertinent portions of the Note are as follows:

> FOR VALUABLE CONSIDERATION, the receipt, adequacy and sufficiency of which are hereby acknowledged, Clearwater 2008 Note Program, LLC, an Idaho limited liability company ("Maker"), promises to pay to the parties listed on Exhibit A attached hereto (the "Noteholders"), the aggregate principal amount of Twenty Million and 00/100 Dollars ($20,000,000) with the option to increase to Forty Million and 00/100 Dollars ($40,000,000), together with interest, late charges, costs and expenses, and all other amounts described below in accordance with the following terms and provisions:
> Section 1 Definitions.
> "Memorandum" shall mean Maker's Confidential Private Placement Memorandum dated August 18, 2008, as amended or supplemented from time to time, relating to

the offer and sale by the Maker of up to $20,000,000 of Notes (subject to increase to $40,000,000).

"Noteholder" shall mean any person or entity hereafter purchasing a Note in accordance with the Memorandum, subject to the provisions of the Transaction Documents applicable thereto, and any successor or assign thereof or entity acquiring an interest herein at any time.

"Transaction Documents" shall mean this Note, the Subscription Agreement and the Memorandum.

Section 2.1 Fixed Interest.
"Commencing on the date hereof and continuing until December 31, 2015, the outstanding principal hereunder shall bear interest at a fixed annual rate of 9%."

Section 3 Payments; Accrual.
"Commencing on the fifteenth day of the month next following the Funding Date and continuing on the fifteenth day of the month thereafter until the outstanding principal hereof is paid in full, Maker shall pay to, or accrue and compound for the benefit of, the Noteholders all unpaid Interest in an amount equal to the product of the principal amount hereunder and that fraction the numerator of which is the Noteholder's principal investment and the denominator of which is the principal amount hereunder. If not sooner paid, Maker shall pay the principal balance hereof in full on the Maturity Date, together with all unpaid accrued interest. Maker shall make all payments of Interest, late charges, and principal to the Noteholders at their respective addresses on file with the Maker as of the day which is ten days prior to the due date of such payment, on or before the date when due, without notice, deduction or offset. All payments shall be made in lawful money of the United States of America."

Section 5 Put Rights.
"Beginning December 31, 2010 and once annually thereafter, up to 10% of the original principal amount may be called by the Noteholders upon not less than 30 days written notice to the Maker."

Section 6 Late Charges.
" * * * Maker therefore agrees that a late charge equal to 5% of each payment of Interest or principal that is not paid within 10 days after its due date is a reasonable estimate of fair compensation for the loss

or damages to the Noteholders will suffer. Further, Maker agrees that such amount shall be presumed to be the amount of damages sustained by Noteholders in such case, and such sum shall be added to amount then due and payable."

Section 8.1 Events of Default:
"Any of the following occurrences shall constitute an "Event of Default" under this Note: (a) failure by Maker to make any payment of Interest on or principal of this Note on or before the twenty-fifth (25^{th}) day of the month first becoming due in accordance with the terms of this Note, without any notice or demand for payment (a "Payment Default"); * * *."

Section 8.2 Remedies.
"Upon any Event of Default under this Note and the expiration of any applicable notice or cure periods: (a) the entire unpaid principal balance hereof , any accrued but unpaid Interest, late charges, and all other amounts owing under this Note, shall, at the option of the Noteholders, without further notice or demand of any kind to Maker or any other person, become immediately due and payable; and (b) Noteholders shall have and may exercise any and all rights and remedies available at law, by statute, or in equity.
The remedies of the Noteholders, as provided in this Note, shall be cumulative and concurrent and may be exercised singularly, successively, or together, at the sole discretion of the Noteholders, as often as occasion therefor shall arise. No act of omission or commission by the Noteholders, including specifically any failure to exercise any right, remedy or recourse, shall be deemed a waiver or release to be effected only through a written documents executed by the Noteholders. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of, any subsequent right, remedy, or recourse to collateral as to any subsequent event."

D. Subsequent Communications to Boling

On or about March 19, 2010, Clearwater Real Estate Investments sent to the Boling by mail a 2009 Year-End Update (Exh. 9) to keep the investors informed of the status of the Note Program. The 2009 Year-End Update letter states, "the assets of RE

Capital, the guarantor, are being maintained at sufficient levels to allow us to meet our obligations." This 2009 Year-End Update revealed information regarding the update and current strategy of the various loans made by Plaintiffs prior to Boling's investment. Two of the four loan projects were in default and/or in bankruptcy. The other two loan projects were having delays in the entitlement process.

On or about June 17, 2010, the Company disclosed its Independent Auditor's Report and Financial Statements for the calendar years 2008 and 2009 (Exh. 10).

On or about March 24, 2011, Clearwater Real Estate Investments sent to the Boling by mail a 2010 Year-End Update (Exhibit 11) to keep the investors informed of the status of the Note Program. Now, all five (5) outstanding loans were in default.

On or about August 19, 2011, the Company disclosed its Independent Auditor's Report and Financial Statements for the calendar years 2009 and 2010 (Exh. 12). The Company is solely owned by the Manager. The Company maintained a separate allowance for each loan receivable. At December 31, 2010, the Company had an allowance for losses of $2,311,584. In 2010, the Company suspended early redemption requests.

On or about October 26, 2011, the Company sent by mail a Notice to Note Holders (Exh. 13), which was received by Boling on November 4, 2011. The Notice states, "Note Holders can be optimistic of the collateral position of the Note Program today." The Notice further states that the amount of the interest payment distribution would be reduced for the months of November 2011, December 2011 and January 2012 and reassessed for February 2012.

On November 6, 2011, Boling sent the Company written notice to redeem 10% of his principal amount under the Transaction Documents and requested a current

Balance Sheet of the Guarantor (Exh. 14 – Email String/Letters). The last Balance Sheet of the Guarantor disclosed to the Boling was dated December 31, 2008.

On November 10, 2011, Clearwater Real Estate Investments acknowledged receipt of Boling's liquidation request, placed Boling's request on a *priority list* with an acceptance date of November 7, 2011 and informed Boling that all liquidation requests have been suspended (Exh. 14 – Email String/Letters). Clearwater Real Estate Investments stated that it "has made multiple attempts to get updated financials from RE Capital (Guarantor) and we have received word that we should have updated financials no later than year end 2011."

On December 1, 2011, Boling *first* obtained by email and reviewed a copy of the Third Supplement to the PPM dated January 20, 2010 from Ross Farris, Director Marketing and Investor Relations for Clearwater. (Exh. 15)

The **Third Supplement to the PPM** states, inter alia, "[a]lthough the Guarantor's net worth of approximately, $53.4 million is lower than the net worth of $54 million it has covenanted to maintain under the Guaranty based on a Maximum Offering Amount of $20,000,000, in the event that the increased Maximum Amount of $21,900,000 is attained, the Guarantor's net worth does provide a principal coverage ratio of: (a) 1.2x, if a portion of the Guarantor's net worth is reserved to provide 1.5x coverage over principal amounts outstanding under the notes issued by Clearwater 2007 Notes Program, LLC (the "2007 Notes Program") (accounting for liquidation of $2,000,000 in principal amounts of the notes issued by the 2007 Notes Program as of December 31, 2009, with $18,000,000 remaining outstanding), and (b) 2.44x, if this reserve is not made (the Guarantor is not required to make this reserve). Attached as

Exhibit A to the Third Supplement to the PPM was the RE Capital Balance Sheet dated December 31, 2009.

On December 14, 2011, Boling received a letter from the Company stating that 1) the security for the loans were not cross-collateralized, 2) the Manager decides exclusively when to get appraisals for the Projects, 3) the 2010 Audited Report and financials of the Company were purportedly first available on May 1, 2011, 4) the initial PPM packet included the Third Supplement to the PPM, the Company has requested a final 2010 Balance Sheet from the Guarantor, and 5) the Company "cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders." (Exh. 14 – Email String/Letters)

On December 20, 2011, Boling spoke by telephone with Lori Fischer, Controller of Clearwater Investment, who informed Boling that the 2010 Audited Report and financials of the Company were first available on or after August 29, 2011.

On December 20, 2011, Boling stated in an email to Clearwater Real Estate Investments: "If the Company maintains now and at the time of the initial PPM that it can alter or over-ride this expressed term regarding Callability on the basis that it has an obligation to ALL Note holders allowing the Company not to abide by this expressed term, then I would request that my subscription be immediately rescinded and the total principal amount of my note be restored." (Exh. 14 – Email String/Letters)

On or about January 12, 2012, Clearwater Real Estate Investments sent a letter to Note Holders postponing all 2011 liquidation requests until further notice. (Exh. 16)

On or about January 25, 2012, the Company sent a letter to Boling stating that it has "been in contact with RE Capital and are hopeful of receiving correspondence from them in the next 30 days. (Exh. 14 – Email String/Letters)

On February 2, 2012, Ross Farris, Director of Marketing and Investor Relations informed Boling by telephone that the reduction of interest payment was made pursuant to Section 3 of the Note and the suspension of liquidation rights was to protect all Noteholders. Boling informed Mr. Farris that he never received a copy of the Note until after submitting his Subscription Agreement and $50,000 payment to the Company. Boling further requested a copy of Exhibit A to the Note. Mr. Farris responded that he would obtain a copy of Exhibit A to the Note, but only with Boling's name on it and not the identity of all Noteholders. No Exhibit A to the Note was ever received by Boling. Mr. Farris also stated that all the business decisions for the Note Program are made by the management team of Clearwater REI, LLC.

On February 2, 2012, Boling sent to Clearwater by email a written Notice of Default on Interest payments for November 2011, December 2011, and January 2011, and a written Notice of Default on his liquidation rights and demanding that payment be made immediately or after a cure period, if necessary. (Exh. 14 – Email String/Letters)

On February 6, 2012, Boling received from Clearwater a cover letter and January Update dated January 31, 2012. (Exh. 17) The cover letter states: "the February payment will be 25% of the monthly interest distributed." The Update acknowledges: "Real Estate values have fallen dramatically nationwide."

On February 9, 2012, Boling received from Clearwater a Quarterly Statement ending December 31, 2011 (Exh 18) that sets forth the "Total Outstanding Principal of Master Promissory Note to Investors" as $21,810,000 and "Total Appraised Value of Collateral" as $25,100,000 and "Collateral valuations dated September 15, 2010, January 19, 2011 and September 21, 2011."

If Boling was timely made aware of the aforementioned facts, Boling would not have made his $50,000 investment in the Note Program.

On February 15, 2012 and out of abundance of caution, Boling filed a Demand for Commercial Arbitration with the American Arbitration Association ("AAA") against all named Cross-Defendants and the Company and served said parties therewith regarding the acts and omissions set forth herein under the arbitration clause in the SA.

On or about March 8, 2012, Cross- Defendants filed with the AAA and served their Answer Statement objecting to arbitrate the disputes set forth in the counterclaim and third party complaint on behalf of all named Cross-Defendants, but not the Company.

Boling has offered not to arbitrate his claims against Plaintiffs, if Plaintiffs allow Boling to prosecute his claims in this lawsuit. Plaintiffs rejected Boling's offer.

Based on Plaintiffs' actionable conduct, Boling seeks monetary and/or equitable relief in his counterclaim alleging 1) violations of the Idaho Consumer Protection Act [*Idaho Code* ("I.C.") §§ 48-601 – 48-619 ("ICPA")] against all Plaintiffs, and each of them , and 3) Breach of Guaranty against the Plaintiff Clearwater REI, LLC.

RIGHT TO COMPEL ARBITRATION

"Arbitrability is a question of law to be decided by the court." (emphasis added) *Mason v. State Farm Mut. Auto Ins. Co.* (2007) 145 Idaho 197, 200. Once the Plaintiffs objected to the arbitration demand with the AAA on the basis of not being signatories to the agreement containing an arbitration clause, the American Arbitration Association did not have jurisdiction to arbitrate the matter as to the objecting Plaintiffs because the issue is for the courts, and not the arbitrator, to decide whether Defendant Boling can compel arbitration, which he did not. However, had Boling attempted to compel

arbitration with the courts, which he does not intend to do if the Court allows Boling's counterclaims to be prosecuted in this lawsuit, Boling would have prevailed and Plaintiffs would not be entitled to their costs and possible attorney fees herein. [3]

A strong public policy favors arbitration. See, e.g., *Bingham County Comm'n v. Interstate Elec. Co.* (1983) 105 Idaho 36, 40. Agreements to arbitrate are encouraged and given explicit recognition as effective means to resolve disputed issues. *Loomis, Inc. v. Cudahy* (1983) 104 Idaho 106, 108. A court reviewing an arbitration clause will order arbitration unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts are to be resolved in favor of coverage. See, *Int'l Ass'n of Firefighters, Local No. 672 v. City of Boise* (2001) 136 Idaho 162, 168.

Whether an arbitration clause in a contract requires arbitration of a particular dispute or claim depends upon its terms. *Lovey v. Gregence BlueShield of Idaho* (2003)

---

[3] If the Court allows Boling's counterclaims to be prosecuted in this lawsuit, which all Plaintiffs/Counter-Defendants have been served with the counterclaims and discovery is pending, then Defendant Boling accepts Plaintiffs' objection to arbitrate and decision not to arbitrate claims against Plaintiffs/Counter-Defendants. Judicial intervention in this lawsuit is Boling's preferred method to resolve his ICPA claims because 1) it allows Boling the right to judicial discovery of information exclusively in Plaintiffs/Counter-Defendants' possession, which is denied by arbitration, 2) none of the proposed arbitrators have any experience in handling unique ICPA claims or issues, and 3) for judicial economy, the prosecution of the counterclaims is significantly advance at this time.

Plaintiffs are judicially estopped from and have waived objecting to the prosecution of Boling's counterclaims in this lawsuit because of having filed their complaint and application to stay arbitration, thus consenting to jurisdiction of having such counterclaims proceed in this court. The fact that the issue of arbitration may be summarily decided by the court does not preclude the filing of any counterclaims in the same action. Plaintiffs present no legal authority otherwise.

139 Idaho 37, 46. In the instant case, the arbitration clause in the Subscription Agreement [SA, p.4, ¶11] covers "any dispute, controversy or other claim arising under, out of or relating to this Agreement or any of the transactions contemplated hereby, or any amendment thereof, or the breach or interpretation hereof or thereof. . . ." The broad language of the arbitration clause would encompass Boling's Breach of Guaranty and ICPA violations claims against the nonsignatory Plaintiffs because these claims and nonsignatory parties relate to the formation and performance of the entire agreement that is in dispute. See, *Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc.* (2005) 142 Idaho 235, 240 – "language is broad enough to include claims under the ICPA ." (underline added)

Plaintiffs' reliance on *Lewis v. CEDU Educational Servs., Inc.* (2000) 135 Idaho 139 and *Rath v. Managed Health Network, Inc.* (1992) 123 Idaho 30 is without merit because the language of the arbitration clauses therein were limited to the parties.

In *Lewis*, the court held that the arbitration provision only applied to the contracting parties, not the third party beneficiaries, because the narrow language of the arbitration provision limited arbitration to "any controversy between the parties" and "of the parties hereto." *Lewis*, 135 Idaho at 143.

In *Rath*, the court held that although the Raths were third party beneficiaries to the contract, the express language of the arbitration clause of the contract was limited to "parties" to the agreement. *Rath*, 123 Idaho at 31. The court reasoned that to hold otherwise would be "inapposite in the face of the language in the Agreement expressly limiting the arbitration clause to the 'parties' to the Agreement." *Ibid.*

In the instant case, there is nothing in the entire agreement that expressly limits the arbitration clause to the parties or excludes nonsignatory parties from arbitration.

The Idaho Supreme Court has noted that the distinction between state and federal substantive arbitration law is largely a distinction without a difference because the applicable legal principles are one and the same. *Mason v. State Farm Mut. Auto Ins. Co.* (2007) 145 Idaho 197, at 200 n.1.

The federal courts have identified five theories pursuant to which an arbitration clause can be enforced by or against a nonsignatory: "1) incorporation by reference; 2) assumption; 3) agency; 4) veil-piercing/alter ego; and 5) estoppel." *Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 268, quoting *Thomson-CSF, S.A. v. American Arbitration Ass'n.* (2nd Cir. 1995) 64 F.3d 773, 776.

With respect to the Breach of Guaranty claim, the Subscription Agreement states: "this Subscription Agreement and the Memorandum, together with all attachments and exhibits thereto, constitute the entire agreement among the parties hereto with respect to the sale of Notes and may be amended, modified or terminated only by a writing executed by all parties." [SA, p.4, ¶13] The Guaranty is attached as Exhibit D to the PPM and as *incorporated by reference* in the Subscription Agreement. Thus, it becomes part of the entire agreement and the guarantor, Plaintiff RE Capital Investments, LLC, is bound by the arbitration clause in the entire agreement.

Additionally, RE Capital Investments, LLC (the Guarantor) is *wholly-owned* by businesses whose sole ownership is either Plaintiffs Ron Meyer and Chris Benak, who are also officers of the Company, As officers of the Company and the principals of the Guarantor, the knowledge of Mssrs. Meyer and Benak that the Guaranty has been made a part of the entire agreement, *supra*, is imputed to RE Capital Investments, LLC (the Guarantor). Thus, the Guarantor is bound by that knowledge and consents to the arbitration clause contained in the Subscription Agreement.

With respect to the ICPA violations claim, the focus of applying the arbitration clause is because the nature of Boling's ICPA claims against the nonsignatory Plaintiffs is interwoven with Plaintiffs' breach of their the duties and obligations under the entire agreement, which includes the arbitration clause. See *Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc.* (11th Cir. 1993) 10 F.3d 753, 757-758 – re equitable estoppel and claims intertwined with contractual obligations. That the claims are cast in tort rather than contract does not avoid the arbitration clause. (*Sunkist, supra,* 10 F.3d at p. 758.)

Also, the incestuous operation of the individual corporate officers and their web of interlocking business entities under the umbrella of the "Clearwater" name creates an oneness of activity to invoke the doctrine of equitable estoppel[4] and an agency relationship[5] with respect to each significant business decision made by all Plaintiffs for

---

[4] Under the **doctrine of equitable estoppel**, claims against the nonsignatory must be dependent upon, or founded in and inextricably intertwined with, the underlying contractual obligations of the agreement containing the arbitration clause. *Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010)186 Cal.App.4th 696, 715 – citing *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 217-218.

[5] When contracting parties agree to arbitrate all disputes "under or with respect to" a contract (as they did here), they generally intend to include disputes about their agents' actions because "[a]s a general rule, the actions of a corporate agent on behalf of the corporation are deemed the corporation's acts." If arbitration clauses only apply to contractual signatories, then this intent can only be accomplished by having every officer and agent (and every affiliate and its officers and agents) either sign the contract or be listed as a third-party beneficiary. *In re Merrill Lynch Trust Co. FSB* (Tex., 2007) 235 S.W.3d 185, 189.

Rowe v. Exline (2007)153 Cal.App.4th 1276, 1285 - A nonsignatory who is the agent of a signatory can even be *compelled* to arbitrate claims against his will. See also, *Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc.* (2005) 142 Idaho 235, 241 – a signatory's agent was entitled to enforce an arbitration clause, citing *Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759.

the Note Program, the Company and the Manager under the entire agreement and to the detriment of the Boling in violation of the ICPA. Thus, the nonsignatory parties are to be bound by the broad arbitration clause in the entire agreement.

The ICPA is a remedial statute, and is to be construed liberally in order to deter deceptive or unfair trade practices and to provide relief for consumers exposed to proscribed practices. I.C. § 48-601[6]; *In re Wiggins* (2001) 273 B.R. 839, 855; *In re Edwards* (1999) 233 B.R. 461, 470; *Fenn v. Noah* (2006) 142 Idaho 775, 780.[7] The ICPA is applicable to commercial transactions. *Myers v. A.O. Smith Harvestore Products, Inc.* (1988) 114 Idaho 432, 441.

The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a PERSON knows, or in the exercise of due care should know, that he has in the past, or is: Obtaining the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed (I.C. § 48-603 (12)); Failing to deliver to the consumer at the time of the consumer's signature a legible copy of the contract or of

---

6 The purpose of these Idaho consumer protection statutes are strikingly similar in Legislative content with the California Consumer Legal Remedies Act [*Cal. Civil Code* §1760].

7 It is the intent of the legislature that in construing this act due consideration and great weight shall be given to the interpretation of the federal trade commission and the federal courts relating to section 5(a)(1) of the federal trade commission act (15 U.S.C. 45(a)(1)), as from time to time amended. I.C. § 48-604 (1). Federal case law as it has developed under Federal Trade Commission Act, although not binding, is **persuasive** in application of Idaho Consumer Protection Act. Federal Trade Commission Act, §§ 1 et seq., 5(a)(1), 15 U.S.C.A. §§ 41 et seq.,45(a)(1); I.C. §§ 48-601 to 48-619. *State ex rel. Kidwell v. Master Distributors, Inc.* (1980) 101 Idaho 447, 453.

any other document which the seller or lender has required or requested the buyer to sign, and which he has signed, during or after the contract negotiation (I.C. § 48-603 (13)); Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer. I.C. § 48-603 (17). The Plaintiffs/Counter-Defendants are allegedly such persons.

Boling contends that 1) Plaintiffs violated I.C. § 48-603 (17) based on their initial failure to timely provide Boling with the Note, the Third Supplement to the PPM, and the 2009 Year-End Update; 2) Plaintiffs violated I. C. § 48-603 (17) during the course of the Note Program because the Plaintiffs' failed to timely and conspicuously disclose material facts as to the deteriorating financial condition of the Note Program's loan portfolio, the inability or refusal of the Company to pay interest or redeemable principal, and the Guarantor's unsatisfactory net worth and cash position; 3) Plaintiffs violated I.C. §48-603 (17) based on their failure to timely provide the 2010 audited reports and financials for the Company and Guarantor's Balance Sheet for 2010 and 2011; 4) Plaintiffs violated I.C. § 48-603 (17) because the 10/26/11 Notice to Note Holders (Exh. 13) had a tendency to mislead the Noteholders, including Boling; 5) Plaintiffs violated I. C. § 48-603 (12) and/or (13) based on their failure to provide Boling with a copy of the Note at the time of providing the PPM and/or Boling submitting the executed Subscription Agreement; and/or 6) Plaintiffs violated I. C. § 48-603 (13) based on their failure to provide Boling with Exhibit A to the Note, which was to list of all existing Noteholders, including Boling, at the time of providing the Note. Evidence and further argument to support these contentions will be presented at time of arbitration on the merits.

Boling's claim for ICPA violations against all Plaintiffs are covered under the

entire agreement, which includes the broad arbitration clause, because 1) Plaintiffs' conduct is inextricably interwoven with the formation and performance of the entire agreement, 2) a benefit was conferred on the nonsignatory Plaintiff(s) as a result of the agreement based on the broad language of the arbitration clause to include all claims "arising under, out of or relating to this Agreement or any of the transactions contemplated hereby" and Plaintiffs accepting the fruits of the agreement, which are the loan proceeds used in part to operate Plaintiffs' related businesses and pay compensation to the individual Plaintiffs, making the nonsignatory Plaintiff(s) a third party beneficiary of the arbitration agreement,[8] 3) a preexisting relationship existed between the nonsignatory Plaintiff(s) and the Company based on the individual Plaintiffs acting in the capacity of agents, officers or employees of the Company and the other business entity Plaintiffs acting as the agent for the Company, making it equitable to compel the nonsignatory Plaintiff(s) to also be bound by the arbitration clause in the entire agreement,[9] *and/or* 4) a mutuality of remedy under the arbitration clause makes it equitable to compel the nonsignatory Plaintiff(s) to also be bound by the arbitration clause in the entire agreement.[10]

---

[8] "Most, if not all, of the loans to be made by the Company with the proceeds of this Offering will be made to Affiliates of the Company and the Manager." [PPM, p.12.]

"The Company, the Manager and their Affiliates are entitled to receive certain significant fees and other significant compensation, payments and reimbursements from the sale of the Notes." [PPM, p.13.]

[9] A nonsignatory who is the agent of a signatory can even be *compelled* to arbitrate claims against his will. *Harris v. Superior Court* (1986) 188 Cal.App.3d 475, 477-479.

[10] "[I]f there were no mutuality of remedy requirement, the seller--which is usually the offeree in the real estate sales context--would have absolutely no incentive to initial

CONCLUSION

Based on the foregoing, Boling respectfully requests that the Court deny the Motion to Stay Arbitration and disallow the recovery by Plaintiffs of any costs and possible attorney fees in pursuing this matter. Additionally, if the Court allows Boling's counterclaims to be prosecuted in this lawsuit, which all Plaintiffs/Counter-Defendants have been served with the counterclaims and discovery is pending, Boling, as the prevailing party, accepts Plaintiffs' objection to arbitrate and decision not to arbitrate claims against Plaintiffs/Counter-Defendants.

Dated: August 20, 2012

Mark Boling

MARK BOLING,
Defendant/Counter-Claimant/Third Party Plaintiff

---

the arbitration provision and thereby bind itself to arbitrate disputes." *Marcus & Millichap Real Estate Investment Brokerage Co. v. Hock Investment Co.* (1998) 68 Cal.App.4th 83, 91, fn. 6.

Clearwater REI, LLC, et al. v. Boling, Case No. CV OC 1208669

CERTIFICATE OF SERVICE

I certify on August 20, 2012, I served the following document(s) in this action:

- **DEFENDANT/COUNTER-CLAIMANT'S OPPOSITION TO MOTION TO STAY ARBITRATION**
- **DECLARATION OF MARK BOLING IN SUPPORT OF DEFENDANT/COUNTER-CLAIMANT'S OPPOSITION TO MOTION TO STAY ARBITRATION**

by sending a true copy thereof by **ELECTRONIC SERVICE** pursuant to *I.R.C.P*, Rule 5 (b) (E) addressed to the party(s) served as follows:

Rebecca A. Rainey – rar@raineylawoffice.com
Amy A. Lombardo - aal@raineylawoffice.com
Attorney for Plaintiffs and Counter -Defendants Clearwater REI, LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak and Rob Ruebel.

The transmission of said document(s) to each party served was reported as complete and without error within a reasonable time after said transmission.

Dated: August 20, 2012

Mark Boling
MARK BOLING

RECEIVED
AUG 23 2012
Ada County Clerk

NO. 1032 FILED
A.M. P.M.
AUG 23 2012
CHRISTOPHER D. RICH, Clerk
By KATHY BIEHL
Deputy

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630
(949) 588-9222
(949) 588-7078 [fax]
maboling@earthlink.net
Defendant/Counter-Claimant/Third Party Plaintiff, in pro per

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT

FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, et al.
Plaintiffs/Counter-Defendants,
vs.
MARK BOLING,
Defendant/Counter-Claimant

MARK BOLING
Third Party Plaintiff,
vs.
CLEARWATER REAL ESTATE INVESTMENTS, LLC.,
Third Party Defendant.

Case No.: CV OC 1208669

DECLARATION OF MARK BOLING IN SUPPORT OF DEFENDANT/COUNTER-CLAIMANT'S OPPOSITION TO MOTION TO STAY ARBITRATION

Date: September 12, 2012
Time: 3:00 p.m.

I, Mark Boling, declare that:

1. I am the Defendant/Counter-Claimant/Third Party Plaintiff ("Boling") in the above-captioned matter.

2. I make this declaration based upon my own personal knowledge unless otherwise indicated. If called upon as a witness, I could and would competently testify to these matters.

3. For judicial economy, any and all exhibits identified herein are attached

to Boling's Counterclaim and Third Party Complaint on file in this action and incorporated fully herein where referenced.

4. On or about February 4, 2010, Boling received an initial package from Rob Ruebel, Regional Vice-President of Sales of Clearwater Real Estate Investments consisting of A) a bound Confidential Private Placement Memorandum Book # 08Note-A238 dated August 29, 2008 (Exh. 1), which included, inter alia, the Private Placement Memorandum (Exh. 1A ,"PPM"), a Guaranty (Exh. 2), and Supplements One and Two to the PPM (collectively, Exh. 3), and B) a cover letter dated February 1, 2010 and miscellaneous sheets about Clearwater Real Estate Investments (collectively, Exh. 4). Boling did not receive a copy of the Note dated August 29, 2008, the Third Supplement to the PPM dated January 20, 2010, or the 2009 Year-End Update dated March 19, 2010 until after the submission and acceptance of his Subscription Agreement.

5. On or about March 6, 2010, Boling received a cover letter dated March 1, 2010 (Exh. 6), an Acceptance of the Subscription Agreement (Exh. 5), a Certificate with an effective date of February 27, 2010 (Exh. 7), and a Note dated August 29, 2008 (Exh. 8) from Clearwater Real Estate Investments.

6. On or about March 19, 2010, Clearwater Real Estate Investments sent to the Boling by mail a 2009 Year-End Update (Exh. 9) to keep the investors informed of the status of the Note Program. Two of the four loan projects were in default and/or in bankruptcy. The other two loan projects were having delays in the entitlement process.

7. On or about June 17, 2010, the Company disclosed its Independent Auditor's Report and Financial Statements for the calendar years 2008 and 2009 (Exh. 10).

8. On or about March 24, 2011, Clearwater Real Estate Investments sent to

the Boling by mail a 2010 Year-End Update (Exhibit 11) to keep the investors informed of the status of the Note Program. Now, all five (5) outstanding loans were in default.

9. On or about August 19, 2011, the Company disclosed its Independent Auditor's Report and Financial Statements for the calendar years 2009 and 2010 (Exh. 12).

10. On or about October 26, 2011, the Company sent by mail a Notice to Note Holders (Exh. 13), which was received by Boling on November 4, 2011. The Notice states, "Note Holders can be optimistic of the collateral position of the Note Program today." The Notice further states that the amount of the interest payment distribution would be reduced for the months of November 2011, December 2011 and January 2012 and reassessed for February 2012.

11. On November 6, 2011, Boling sent the Company written notice to redeem 10% of his principal amount under the Transaction Documents and requested a current Balance Sheet of the Guarantor (Exh. 14 – Email String/Letters). The last Balance Sheet of the Guarantor disclosed to the Boling was dated December 31, 2008.

12. On November 10, 2011, Clearwater Real Estate Investments acknowledged receipt of Boling's liquidation request, placed Boling's request on a *priority list* with an acceptance date of November 7, 2011 and informed Boling that all liquidation requests have been suspended (Exh. 14 – Email String/Letters).

13. On December 1, 2011, Boling first obtained by email and reviewed a copy of the Third Supplement to the PPM dated January 20, 2010 from Ross Farris, Director Marketing and Investor Relations for Clearwater. (Exh. 15)

14. The Third Supplement to the PPM states, inter alia, "[a]lthough the Guarantor's net worth of approximately, $53.4 million is lower than the net worth of

$54 million it has covenanted to maintain under the Guaranty based on a Maximum Offering Amount of $20,000,000, in the event that the increased Maximum Amount of $21,900,000 is attained, the Guarantor's net worth does provide a principal coverage ratio of: (a) 1.2x, if a portion of the Guarantor's net worth is reserved to provide 1.5x coverage over principal amounts outstanding under the notes issued by Clearwater 2007 Notes Program, LLC (the "2007 Notes Program") (accounting for liquidation of $2,000,000 in principal amounts of the notes issued by the 2007 Notes Program as of December 31, 2009, with $18,000,000 remaining outstanding), and (b) 2.44x, if this reserve is not made (the Guarantor is not required to make this reserve). Attached as Exhibit A to the Third Supplement to the PPM was the RE Capital Balance Sheet dated December 31, 2009.

15. On December 14, 2011, Boling received a letter from the Company confirming that 1) the security for the loans were not cross-collateralized, 2) the Manager decides exclusively when to get appraisals for the Projects, 3) the 2010 Audited Report and financials of the Company were purportedly first available on May 1, 2011, 4) the initial PPM packet included the Third Supplement to the PPM, the Company has requested a final 2010 Balance Sheet from the Guarantor, and 5) the Company "cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders." (Exh. 14 – Email String/Letters)

16. On December 20, 2011, Boling spoke by telephone with Lori Fischer, Controller of Clearwater Investment, who informed Boling that the 2010 Audited Report and financials of the Company were first available on or after August 29, 2011.

17. On December 20, 2011, Boling stated in an email to Clearwater Real Estate Investments: "If the Company maintains now and at the time of the initial PPM

that it can alter or over-ride this expressed term regarding Callability on the basis that it has an obligation to ALL Note holders allowing the Company not to abide by this expressed term, then I would request that my subscription be immediately rescinded and the total principal amount of my note be restored." (Exh. 14 – Email String/Letters)

18. On or about January 12, 2012, Clearwater Real Estate Investments sent a letter to Note Holders postponing all 2011 liquidation requests until further notice. (Exh. 16)

19. On or about January 25, 2012, the Company sent a letter to Boling stating that it has "been in contact with RE Capital and are hopeful of receiving correspondence from them in the next 30 days. (Exh. 14 – Email String/Letters)

20. On February 2, 2012, Ross Farris, Director of Marketing and Investor Relations informed Boling by telephone that the reduction of interest payment was made pursuant to Section 3 of the Note and the suspension of liquidation rights was to protect all Noteholders. Boling informed Mr. Farris that he never received a copy of the Note until after submitting his Subscription Agreement and $50,000 payment to the Company. Boling further requested a copy of Exhibit A to the Note. Mr. Farris responded that he would obtain a copy of Exhibit A to the Note, but only with Boling's name on it and not the identity of all Noteholders. No Exhibit A to the Note was ever received by Boling. Mr. Farris also stated that all the business decisions are made by the management team of Clearwater REI, LLC.

21. On February 2, 2012, Boling sent to Clearwater by email a written Notice of Default on Interest payments for November 2011, December 2011, and January 2011, and a written Notice of Default on his liquidation rights and demanding

that payment be made immediately or after a cure period, if necessary. (Exh. 14 – Email String/Letters)

22. On February 6, 2012, Boling received from Clearwater a cover letter and January Update dated January 31, 2012. (Exh. 17) The cover letter states: "the February payment will be 25% of the monthly interest distributed." The Update acknowledges: "Real Estate values have fallen dramatically nationwide."

23. On February 9, 2012, Boling received from Clearwater a Quarterly Statement ending December 31, 2011 (Exh 18) that sets forth the "Total Outstanding Principal of Master Promissory Note to Investors" as $21,810,000 and "Total Appraised Value of Collateral" as $25,100,000 and "Collateral valuations dated September 15, 2010, January 19, 2011 and September 21, 2011."

24. If before investing, Boling had been made aware of the aforementioned facts, including but not limited to, 1) the Note's contents that the purported accrual of interest payments, as compared with the actual payment of interest as expressed in the PPM, was to apply to his transaction with the Company, 2) the contents of the Third Supplement to the PPM that a) further restrictions were place on the Noteholder's right to redeem principal, and b) the Guarantor's net worth on December 31, 2009 was less than the covenanted amount set forth in the Guaranty, 3) the Guarantor's cash reserves was depleted before Boling received the PPM, and/or 4) the Program's unstable loan portfolio as described in the 2009 Year-End Update, Boling would not have entered into the Subscription Agreement and invested in the purchase of the Note.

25. On February 15, 2012 and out of abundance of caution, Boling filed a Demand for Commercial Arbitration with the American Arbitration Association ("AAA") against all named Counter-Defendants and the Company and served said

parties therewith regarding the acts and omissions set forth herein under the arbitration clause in the SA.

26. On or about March 8, 2012, Cross- Defendants filed with the AAA and served their Answer Statement objecting to arbitrate the disputes set forth in the counterclaim and third party complaint on behalf of all named Counter-Defendants, but not the Company.

27. Boling has sought no judicial intervention to compel arbitration against Counter-Defendants.

28. Boling has offered not to arbitrate his counterclaims against Plaintiffs, if Plaintiffs allow Boling to prosecute his counterclaims in this lawsuit. Plaintiffs rejected Boling's offer.

29. Boling has served all Plaintiffs/Counter-Defendants with the counterclaims and discovery on the counterclaims is pending in this lawsuit.

I declare under penalty of perjury under laws of the states of California and Idaho and the United States of America that the foregoing is true and correct and executed on August 20, 2012 at Lake Forest, California.

By: Mark Boling
MARK BOLING

Bail Tapia 9/10/12 LW

NO. _____
A.M. _____ FILED P.M. 4:32
SEP 07 2012
CHRISTOPHER D. RICH, Clerk
By CHRISTINE SWEET
DEPUTY

Rebecca A. Rainey, ISB No. 7525
Amy Lombardo, ISB No. 8646
RAINEY LAW OFFICE
910 W. Main St. Ste. 258
Boise, ID 83702
Phone: (208) 258-2061
Facsimile: (208) 473-2952
rar@raineylawoffice.com
aal@raineylawoffice.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, an Idaho limited liability company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONDAL D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; RON RUEBEL, an individual; RE CAPITAL INVESTMENTS, LLC, a Delaware limited liability company,

Plaintiffs/Counterdefendants,

vs.

MARK BOLING, an individual,

Defendant/Counterclaimant.

Case No.: CV OC 12-08669

REPLY MEMORANDUM IN SUPPORT OF MOTION AND APPLICATION TO STAY ARBITRATION

MARK BOLING, an individual,

Third Party Plaintiff,

vs.

CLEARWATER REAL ESTATE INVESTMENTS, LLC, a Delaware limited liability company

Third Party Defendant.

COME NOW, the above named Plaintiffs/Petitioners,[1] Clearwater REI, LLC; Barton Cole Cochran, an individual; Chad James Hansen, an individual; Ronald D. Meyer, an individual; Christopher J. Benak, an individual; and Rob Ruebel, an individual, by and through the undersigned counsel of record, and hereby file the following reply brief in support of their Motion to Stay Arbitration under Idaho Code § 7-902(b):

I. INTRODUCTION

Plaintiff/Petitioners filed a Motion to Stay Arbitration on the grounds that they are not parties to the subscription agreement which contains the arbitration provision. In his opposition, defendant/respondent Mark Boling ("Boling") concedes that he has not sought to compel arbitration and, in fact, prefers to not arbitrate with the named parties. *See*, Boling Opposition at 16-17, n 3. Instead, he reiterates a prior argument that he seeks to proceed against the non-signatory parties via his Counterclaim in the court system. However, Boling's counterclaim is impermissibly filed, and proceeding with it is inappropriate because I.C. § 7-901, et seq. and the petition and complaint filed herein, provide only limited jurisdiction.[2]

[1] Plaintiff RE Capital filed for Chapter 7 bankruptcy on July 6, 2012.
[2] This issue has been fully and separately briefed. See, Plaintiff/Petitioners' Memorandum, Motion to Dismiss, and Reply.

The argument here, which Boling does not sufficiently counter, is that arbitration should be stayed as to the non-signatory parties.[3] Because one who is not a signatory to an agreement to arbitrate should not be required to submit to arbitration, and as the non-signatories here do not fall under one of the exceptions to the general rule, this motion to stay should be granted.

II. ARGUMENT

A. A Non-Signatory Party Cannot be Compelled to Arbitrate Under these Facts

The determination of whether or not a non-party can be forced to arbitrate is a question of applicable state contract law. *Arthur Andersen, LLP v. Carlisle*, 556 U.S. 624, 129 S. Ct. 1896 (2009)(holding that under the Federal Arbitration Act the question of what is arbitrable and whether a stay can be granted for non-signatory parties is a question of state law).

Boling cites a Second Circuit decision which states that an arbitration clause can be enforced by or against a non-signatory under five different theories, none of which apply here. Boling brief at 19 (citing *Boucher v. Alliance Title Co., Inc.*, 127 Cal. App. 4th 262, 268), *see also*, *Arthur Andersen, LLP v. Carlisle*, 556 U.S. 624, 631, 129 S. Ct. 1896, 1902 (2009) (stating that because traditional principles of state law allow a contract to be enforced by or against nonparties to the contract through assumption, piercing of the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel, it was error for the Sixth Circuit to hold that nonparties to a contract are categorically barred from relief under the federal arbitration act).

---

[3] Boling also argues that the particular issues of which he is seeking adjudication in the counterclaim, i.e. Breach of Guarantee and relief under the Idaho Consumer Protection Act, should be addressed in arbitration. These plaintiff/petitioners do not take a position here on what *issues* should legally be arbitrated, only that the *parties* are not subject to arbitration. Any argument regarding whether or not the claims are arbitrable should be addressed when the correct parties to the dispute are before the court.

Incorporation by Reference

Boling does not describe or explain the basis for holding non-signatory parties bound to an arbitration agreement in this matter based upon a theory of incorporation by reference. The doctrine of 'incorporation by reference' holds that when a writing is signed that references other, unsigned documents, under certain circumstances parol evidence may be permitted to determine which documents are included in the signed writing. 1 Williston on Contracts, sec. 581. However, "*what is essential is that the signature of the party to be charged shall authenticate the whole of the writing.*" *Id.* at 1121 (emphasis added). Here, assuming *arguendo* that any and all of the documents referenced by Boling are considered together as one agreement, the signatures to that agreement remain only those of Boling and Clearwater 2008 Note Program, LLC, by Clearwater REI, LLC, and its manager Bart Cochran. *See*, Subscription Agreement, Exhibit A to Petition and Complaint for Stay of Arbitration. Thus, even if the Subscription Agreement, the Private Placement Memorandum ("PPM"), and the Guaranty are read together, there is no credence to the theory that incorporation by reference would bind the non-signatory plaintiff/petitioners to the entire agreement to which they are not a party. The non-signatory parties are not bound by the arbitration agreement under the incorporation by reference theory.

Boling similarly argues that if all of the documents including the Guaranty are incorporated by reference that the guarantor, RE Capital Investments, LLC, is bound by the arbitration clause. However, all parties are in agreement that any action against RE Capital Investments, LLC is stayed pending any bankruptcy proceedings. Thus, any arguments made by Boling regarding RE Capital Investments, LLC are moot. *See*, *Arthur Andersen, LLP v. Carlisle*,

556 U.S. 624, 627, 129 S. Ct. 1896, 1900 (2009)(stating that the district court denied as moot a motion to stay by a party that filed bankruptcy while its motion was pending).

Assumption

There are no allegations here that there was any assumption of the contract by the third party plaintiff/petitioners, and Boling does not argue that this exception is applicable.

Veil-Piercing/Alter Ego

Although Boling discusses a "web of interlocking business entities" in his allegations directed at the plaintiff/petitioners, he does not specifically allege or demonstrate that an alter ego situation exists, nor that the corporate veil of the 2008 Note Program should be pierced in order to reach these non-signatory parties.

Under Idaho law, a party is permitted to pierce the corporate veil if it is clear that a company is an alter ego for an **individual**. In order for a business entity to be an alter ego of an individual, there must be (1) a unity of interest and ownership to a degree that the separate personalities of the business entities and individuals no longer exist and (2) if the acts are treated as acts of the business an inequitable result would follow. *Vanderford Co., Inc. v. Knudson*, 165 P. 3d 261, 270-71 (2007), citing *Surety Life Ins. Co. v. Rose Chapel Mortuary,* 95 Idaho 599, 601, 514 P.2d 594, 596 (1973).

Here, there is no evidence or showing of a unity of interest between the entities and individuals that were included in the arbitration demand. The piercing the corporate veil exception to the general rule does not apply to plaintiff/petitioners.

Agency/Third Party Beneficiary

As previously stated in the Motion to Stay Arbitration, arbitration is strictly a matter of contract law. *See Storey Constr., Inc. v. Hanks*, 148 Idaho 401, 407, 224 P.3d 468, 474 (2009). If a contract is unambiguous and the persons at issue are not named parties to the contract, those persons are not subject to the arbitration agreement. *Lewis v. Cedu Educ. Servs., Inc.*, 135 Idaho 139, 15 P.3d 1147 (2000), *Rath v. Managed Health Network, Inc.*, 123 Idaho 30, 844 P.2d 12 (1992).

Generally, an agent of a disclosed principal, even one who negotiates and signs a contract for a principal, does not become a party to the contract. *Restatement (Second) of Agency* § 320 (1958). Also under traditional agency principles, the only other way "that an agent can be bound by the terms of a contract is if she is made a party to the contract by her principal acting on her behalf with actual, implied, or apparent authority." *Bel-Ray Co. v. Chemrite Ltd.*, 181 F.3d 435, 445-446 (3rd Cir. N.J. 1999).

Here, there has been no argument or evidence presented to show that under an agency or third party beneficiary theory the plaintiff/petitioners should be subject to an arbitration agreement to which they are not a party. Instead, the plaintiff/petitioners asserted in their motion to stay that Idaho case law has specifically found that third party beneficiaries are not bound to arbitrate under a contract from which they receive a benefit but are not a party. *See, e.g., Lewis v. Cedu Educ. Servs., Inc.*, 135 Idaho 139, 15 P.3d 1147 (2000), *Rath v. Managed Health Network, Inc.*, 123 Idaho 30, 844 P.2d 12 (1992).

Furthermore, to the extent that Boling is alleging that individual parties who are non-signatories to the agreement are subject to arbitration, this argument also fails. Where a

corporate entity is the signatory to the contract containing an arbitration agreement but a party attempts to subject an individual defendant to arbitration, individuals who are not signatories are not individually liable under the contract. *Roe v. Ladymon*, 318 S.W. 3d 502, 520 (2010).

Estoppel

Judicial estoppel arguments fail where no inconsistent position is taken by the party who is attempting to stay the arbitration. *D.K. Joint Venture 1 v. Weyand*, 649 F.3d 310 (2011). Similarly, any argument that a party must be bound by arbitration when they have actively participated in such arbitration without objection is not applicable here. *See, e.g., Fortune Alsweet & Eldridge, Inc. v. Daniel,* 724 F.2d 1355 (9th Cir. 1983). Here, petitioners have consistently objected to being subject to arbitration, and were proactive in filing this petition and complaint to have the arbitration stayed as to them. They are not asserting any claim against Boling under the subscription agreement.

Furthermore, although Boling cites to five potential theories under which an arbitration clause can be enforced by or *against* a nonsignatory, he provides no authority to suggest that an arbitration agreement can be enforced upon a nonsignatory *when the nonsignatory is not affirmatively seeking to recovery under the contract.* On the contrary, authority holds that a party who has signed an arbitration agreement cannot compel a non-signatory party. "Refusing to order arbitration of a dispute where one of the parties claims that it never signed the agreement, and therefore never agreed to anything, is consistent with the Supreme Court's pronouncements that arbitration 'does not require parties to arbitrate when they have not agreed to do so,' and that 'arbitration under the FAA is a matter of consent, not coercion.'" *Will-Drill Res., Inc. v. Samson*

Res. Co., 352 F.3d 211, 216-217 (5th Cir. La. 2003) (*citing EEOC v. Waffle House, Inc.*, 534 U.S. 279, 293-94, 122 S. Ct. 754 (2002) *and Volt Info. Scis., Inc. v. Bd. of Trs.*, 489 U.S. 468, 478-79, 109 S. Ct. 1248 (1989)).

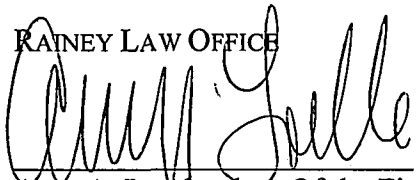
The U.S. Supreme Court has "made clear that arbitration is a matter of private contract, and it goes without saying that a contract cannot bind a nonparty." *Id.* (internal citations omitted). Arbitration is a matter of contract which cannot be forced upon a party absent its consent. *Will-Drill Res., Inc. v. Samson Res. Co.*, 352 F.3d 211, 218 (5th Cir. La. 2003), *Thomson-CSF, S.A. v. American Arbitration Ass'n*, 64 F.3d 773, 779 (2d Cir. N.Y. 1995) (stating that where the situation is inverse, and a signatory seeks to compel a non-signatory, the distinction is important because as a matter of contract, the courts have no authority to mandate that a nonsignatory submit to arbitration when the party has not agreed to do so). Thus, "it matters whether the party resisting arbitration is a signatory or not." *Covington v. Aban Offshore Ltd.*, 650 F.3d 556, 561 (5th Cir. Tex. 2011)

III. CONCLUSION

Therefore, for the foregoing reasons, the plaintiff/petitioners seek an order staying arbitration as to them because they are not parties to the subscription agreement that contains the arbitration clause.

DATED this 7th day of September, 2012.

RAINEY LAW OFFICE



Amy A. Lombardo – Of the Firm
Attorneys for Plaintiff/Cross-Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of September, I caused to be served a copy of the foregoing **REPLY MEMORANUM IN SUPPORT OF MOTION AND APPLICATION TO STAY ARBITRATION** on the following, in the manner indicated below:

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

( ) Via U.S. Mail
( ) Via Facsimile – 949-588-7078
( ) Via Overnight Mail
( ) Via Hand Delivery
(X) Via e-mail

Amy A. Lombardo

A.M ____ FILED P.M. 4:55
OCT 16 2012
CHRISTOPHER D. RICH, Clerk
By TARA THERRIEN
DEPUTY

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC., an Idaho limited liability company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONALD D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; RON RUEBEL, an individual; RE CAPITAL INVESTMENTS, LLC., a Delaware limited liability company, Plaintiffs, vs. MARK BOLING, an individual, Defendant.	Case No.: CV-OC 2012-08669 DECISION AND ORDER RE: MOTION TO STAY ARBITRATION

The plaintiffs filed this action on May 14, 2012 to stay arbitration on the grounds that they are not signatories to any arbitration agreement with the defendant. It is undisputed that the defendant, Mark Boling, signed a Subscription Agreement for the Clearwater 2008 Note Program LLC (Note Program LLC) with Clearwater REI, LLC acting as agents for the Note Program LLC. The Subscription Agreement included an arbitration provision. On February 15, 2012, Mark Boling filed a demand for arbitration with the American Arbitration Association. The demand for arbitration listed Clearwater REI, LLC., Clearwater Real Estates Investments LLC, RE Capital , LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher Benak, and Ron Ruebel.[1] In addition to his Answer, the defendant also filed a Counterclaim and Third Party Complaint. It should be noted that RE Capital has filed bankruptcy so this Court will not address any issues related to it. The Court has previously

[1] All facts used in this Decision are those which were admitted by the defendant in the Answer.

denied the plaintiffs' motion to dismiss the Counterclaim pursuant to I.R.C.P. 12 (b)(1) since the Court does have subject matter jurisdiction over the types of claims raised by the defendant's pleadings. *Borah v. McCandless*, 147 Idaho 73, 205 P.3d 1209 (2009). The Court notes that the relief sought by the plaintiffs is a determination that they are *not* subject to the requirement to arbitrate contained in the Subscription Agreement—if their position is correct, that hardly gives a basis for them to evade any direct liability they may have for consumer protection violations on the record as it currently exists,[2] at a minimum, the Court could not address the merits of the claim on this record.

The parties to the Subscription Agreement are Clearwater 2008 Note Program LLC, an Idaho limited liability company, and Mark Boling. Until or unless additional evidence is presented to the Court as provided for by I.R.C.P. 43(e) that would warrant any other conclusion, the only parties which are required to arbitrate are Clearwater 2008 Note Program LLC and Mark Boling. The motion to stay arbitration as to Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher Benak, and Ron Ruebel and Clearwater Real Estates Investments LLC is granted.

It is so ordered.

Dated this 16 day of October, 2012.

Deborah A. Bail
District Judge

[2] The Idaho Rules of Civil Procedure do not recognize "Declarations." Evidentiary submissions for motions are required to be submitted under oath either by way of affidavits or depositions or oral testimony if permitted by the Court or by stipulations of the parties. I.R.C.P. 43(e). The Counterclaim and Third Party Complaint are not verified. Idaho Rule of Evidence 201 does not authorize the Court to take judicial notice of the attachments to the Counterclaim or Third Party Complaint.

Rebecca A. Rainey, ISB No. 7525
RAINEY LAW OFFICE
910 W. Main St. Ste. 258
Boise, ID 83702
Phone: (208) 258-2061
Facsimile: (208) 473-2952
rar@raineylawoffice.com

NO. _____ FILED 439
A.M. _____ P.M.
NOV 09 2012
CHRISTOPHER D. RICH, Clerk
By DAYSHA OSBORN
DEPUTY

Attorneys for Clearwater REI, LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak, and Ron Ruebel

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, an Idaho limited liability company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONALD D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; RON RUEBEL, an individual; RE CAPITAL INVESTMENTS, LLC, a Delaware limited liability company,

Plaintiffs/Counterdefendants,

vs.

MARK BOLING, an individual,

Defendant/Counterclaimant.

MARK BOLING, an individual,

Third Party Plaintiff,

vs.

CLEARWATER REAL ESTATE INVESTMENTS, LLC, a Delaware limited liability company

Third Party Defendant.

Case No.: CV OC 12-08669

ANSWER TO COUNTERCLAIM

COMES NOW Clearwater REI, LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak, and Ron Ruebel ("Counterdefendants"), by and through undersigned counsel of record, and hereby answer defendant Mark Boling's counterclaim as follows:

1. Answering paragraph 1 of the counterclaim, counterdefendants state that such paragraph contains a statement of purpose for which no answer is required. To the extent that such paragraph does contain facts that require an answer, counterclaimants deny the same.

2. Answering paragraph 2, counterdefendants claim that the documents attached to the counterclaim as exhibits speak for themselves and defendants admit that such documents appear to be true and correct copies. Counterdefendants reserve the right to challenge the authenticity of any such exhibits if such good faith basis arises.

3. Counterdefendants admit the allegations contained in paragraph 3 of the counterclaim.

4. Paragraph 4 of the Counterclaim does not contain statements readily capable of being admitted or denied and, on that basis, counterdefendants deny the same.

5. Counterdefendants admit the factual allegations set forth in paragraph 5; counterdefendants further state that they bear no relationship to Clearwater Real Estate Investment, LLC, a Delaware limited liability company

6. Counterdefendants admit that, at all times material to the events set forth in the Counterclaim, counterdefendant Clearwater REI, LLC and Clearwater 2008 Note Program, LLC's principal place of business was located at 1300 E. State Street, Eagle, ID 83616.

7. Answering paragraph 7 of the Complaint, counterdefendants admit only that Clearwater REI, LLC is involved in real estate investments. To the extent that paragraph 7 contains additional factual allegations requiring a response, counterdefendants deny the same.

8. Counterdefendants admit the allegations contained in paragraph 8.

9. Counterdefendants admit that the Individual Cross-Defendants are owners, officers and/or employees of Clearwater REI, LLC.

10. Counterdefendants are without information or knowledge sufficient to form a belief as to the truthfulness of the facts alleged in paragraph 10 and on that basis, deny the same.

11. Counterdefendants deny the allegations set forth in paragraph 11 of the counterclaim.

12. Counterdefendants deny the allegations set forth in paragraph 12 of the counterclaim.

13. Answering paragraph 13 of the counterclaim, counterdefendants admit that Mark Boling is a California resident who purchased a Note in the amount of $50,000.00 from Clearwater 2008 Note Program, LLC, through Mr. Boling's registered broker dealer. Counterdefendants are without information or knowledge sufficient to form a belief as to the truthfulness of the remaining allegations contained in paragraph 13 and, on that basis, deny the same.

14. Counterdefendants deny paragraph 14 of the counterclaim.

15. Answering paragraph 15 of the Complaint, counterdefendants admit that an initial package was sent to counterclaimant on or about February 4, 2010. Counterdefendants deny that such initial package did not contain the Third Supplement to the PPM dated January 20, 2010. Counterdefendants admit that it did not contain the 2009 Year-End Update dated March 19, 2010, because such document was not yet in existence. Counterdefendants admit that a copy of the Note dated August 29, 2008, was not included in the initial package.

16. Answering paragraph 16 of the counterclaim, counterdefendants state only that the PPM speaks for itself.

17. Answering paragraph 17 of the counterclaim, counterdefendants state only that the Guaranty speaks for itself.

18. Answering paragraph 18 of the counterclaim, counterdefendants state only that the First Supplement to PPM speaks for itself.

19. Answering paragraph 19 of the counterclaim, counterdefendants state only that the First Supplement to PPM speaks for itself.

20. Answering paragraph 20 of the counterclaim, counterdefendants state only that the Second Supplement to PPM speaks for itself.

19. (b)[1] Answering paragraph 19(b) of the counterclaim, counterdefendants admit only that Boling executed and submitted a subscription agreement to the 2008 Note Program and paid the sum of $50,000.00 to the 2008 Note Program. Counterdefendants are without information or knowledge sufficient to form a belief as to the truthfulness of the remaining allegations set forth in paragraph 19 of the counterclaim and, on that basis, deny the same.

20. (b) Answering paragraph 20(b) of the counterclaim, counterdefendants state only that the Subscription Agreement speaks for itself.

21. Answering paragraph 21 of the counterclaim, counterdefendants state only that the Subscription Agreement speaks for itself.

22. Answering paragraph 22 of the counterclaim, counterdefendants state only that the Subscription Agreement speaks for itself.

---

[1] Due to a scriveners error in the paragraphs numbered in the counterclaim the numbers 19 and 20 were inadvertently duplicated. For ease of reference regarding answers to the remaining paragraphs of the complaint, the scriveners error is duplicated herein with a (b) designation following the second use of each number.

23. Answering paragraph 23 of the counterclaim, counterdefendants state that the PPM and cross-complainant's acknowledgement under the Subscription Agreement speak for themselves. Counterdefendants are without information or knowledge sufficient to form a belief as to the truthfulness of the remaining allegations set forth in paragraph 23 and, on that basis, deny the same.

24. Counterdefendants admit that cross-complainant allegations set forth in paragraph 24 of the Counterclaim. To the extent that such paragraph indicates that an unrelated Deleware entity provided such documents to plaintiff, Counterdefendants deny the same.

25. Paragraph 25 calls for a legal conclusion to which no answer is required; to the extent that paragraph 25 does contain factual allegations that require a legal conclusion, counterdefendants are unable to parse them out from the legal conclusions made and, on that basis, deny the same.

26. Answering paragraph 26, counterdefendants state only that the Acceptance of Subscription Agreement speaks for itself.

27. Answering paragraph 27, counterdefendants state only that the Certificate speaks for itself.

28. Answering paragraph 28, counterdefendants state only that the Note speaks for itself.

29. Answering paragraph 29, counterdefendants state only that the Note speaks for itself.

30. Answering paragraph 30, counterdefendants state only that the Note and the PPM speak for themselves.

31. Paragraph 31 of the counterclaim calls for a legal conclusion to which no answer is required. To the extent that paragraph 31 does contain factual allegations that require an answer, counterdefendants are unable to parse them out from the legal conclusions made and, on that basis, deny the same.

32. Answering paragraph 32, counterdefendants state only that the PPM speaks for itself.

33. Answering paragraph 33, counterdefendants state that the Note speaks for itself. To the extent that paragraph 33 contains legal conclusions to which no answer is required, no answer is to be implied; to the extent that paragraph 33 contains factual allegations, that require an answer, counterdefendants are unable to parse them from the legal conclusions state and, on that basis, deny the same.

34. Answering paragraph 34, counterdefendants state only that the documents attached to the counterclaim as Exhibit 9 speak for themselves. To the extent that such paragraph indicates that an unrelated Deleware entity provided such documents to plaintiff, Counterdefendants deny the same.

35. Answering paragraph 35, counterdefendants state only that the documents attached to the counterclaim as Exhibit 10 speak for themselves.

36. Answering paragraph 36, counterdefendants state only that the document attached to the counterclaim as Exhibit 11 speaks for itself.

37. Answering paragraph 37, counterdefendants state that the documents attached to the counterclaim as Exhibit 12 speak for themselves.

38. Counterdefendants admit that Clearwater 2008 Note Program, LLC is solely owned by Clearwater REI, LLC.

39. Counterfendants are without information or knowledge sufficient to form a belief as to the truthfulness of the allegations set forth in paragraph 39 of the Counterclaim and, on that basis, deny the same.

40. Counterdefendants admit the allegations set forth in paragraph 40 of the Counterclaim.

41. Answering paragraph 41, counterdefendants state that the document attached to the Counterclaim as Exhibit 13 speaks for itself.

42. Answering paragraph 42, counterdefendants state that the document attached to the counterclaim as Exhibit 13 speaks for itself.

43. Answering paragraph 43 of the counterclaim, counterdefendants state that the documents attached to the counterclaim as Exhibit 14 speak for themselves.

44. Counterclaimants deny the allegations set forth in paragraph 44 of the Counterclaim.

45. Answering paragraph 45 of the counterclaim, counterdefendants state that the documents attached to the counterclaim as Exhibit 14 speak for themselves. To the extent that any statements contained in paragraph 45 draw legal conclusions to which no answer is required, such legal conclusions are denied.

46. Paragraph 46 of the counterclaim calls for a legal conclusion to which no answer is required. To the extent that paragraph 46 does contain factual allegations that do require a response, counterdefendants are unable to parse those factual allegations out from the legal conclusions drawn and, on that basis, deny the same.

47. Counterclaimants are without information or knowledge sufficient to form a belief as to the truthfulness of the allegations set forth in paragraph 47 of the Counterclaim and, on that basis, deny the same.

48. Paragraph 48 of the counterclaim calls for a legal conclusion to which no answer is required. To the extent that paragraph 48 does contain factual allegations that do require a response, counterdefendants are unable to ascertain what those factual allegations are and, on that basis, deny the same.

49. Answering paragraph 49 of the counterclaim, counterdefendants state that the Third Supplement to the PPM speaks for itself.

50. Answering paragraph 50 of the counterclaim, counterdefendants state that the documents attached as Exhibit 14 speak for themselves.

51. Counterdefendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations set forth in paragraph 51 of the Counterclaim.

52. Answering paragraph 52 of the counterclaim, counterdefendants state that the documents attached as Exhibit 14 speak for themselves.

53. Answering paragraph 53 of the counterclaim, counterdefendants state that the documents attached as Exhibit 16 speak for themselves.

54. Answering paragraph 54 of the counterclaim, counterdefendants state that the documents attached as Exhibit 14 speak for themselves.

55. Answering paragraph 55 of the counterclaim, counterdefendants are without information or knowledge sufficient to form a belief as to the truthfulness of the allegations set forth therein and, on that basis, deny the same.

56. Answering paragraph 56 of the counterclaim, counterdefendants state that the documents attached as Exhibit 14 speak for themselves.

57. Paragraph 57 of the counterclaim contains a legal conclusion to which no answer is required; to the extent that paragraph 57 contains factual allegations which do require an answer, counterdefendants deny the same.

58. Answering paragraph 58 of the counterclaim, counterdefendants state that the documents attached as Exhibit 17 speak for themselves.

59. Paragraph 59 of the counterclaim contains a legal conclusion to which no answer is required; to the extent that paragraph 59 contains factual allegations which do require an answer, counterdefendants deny the same.

60. Answering paragraph 60 of the counterclaim, counterdefendants state that the documents attached as Exhibit 18 speak for themselves.

61. Counterdefendants admit the facts set forth in paragraph 61 of the counterclaim.

62. Counterdefendants admit the facts set forth in paragraph 62 of the counterclaim.

63. Answering paragraph 63 of the counterclaim, counterdefendants deny that defendant was forced to file a demand for arbitration against Clearwater 2008 Note Program, LLC and did so voluntarily; counterdefendants further deny that defendant had any contractual right to file a demand for arbitration as to them and that such demand for arbitration was not filed in good faith.

64. Counterdefendants are without information or knowledge sufficient to form a belief as to the truthfulness of the allegations set forth in paragraph 64 of the counterclaim and, on that basis, deny the same.

65. Counterdefendants deny the allegations set forth in paragraph 65 of the counterclaim.

66. Counterdefendants deny the allegations set forth in paragraph 66 of the counterclaim.

67. Paragraph 67 of the counterclaim contains a legal conclusion to which no answer is required; to the extent that paragraph 67 contains any factual allegations that do require an answer, counterdefendants deny the same.

68. Counterdefendants incorporate and reallege paragraphs 1 – 67 as set forth herein.

69. Paragraph 69 of the counterclaim contains a legal conclusion to which no answer is required; to the extent that paragraph 69 does contain factual allegations that require an answer, counterdefendants deny the same.

70. Paragraph 70 of the counterclaim contains a legal conclusion to which no answer is required; to the extent that paragraph 70 does contain factual allegations that require an answer, and to the extent those factual allegations are not otherwise answered herein, counterdefendants deny the same.

71. Counterdefendants are without information or knowledge sufficient to form a belief as to the truthfulness of the allegations set forth in paragraph 71 of the counterclaim and, on that basis, deny the same.

72. Counterdefendants are without information or knowledge sufficient to form a belief as to the truthfulness of the allegations set forth in paragraph 72 of the counterclaim and, on that basis, deny the same.

73. Counterdefendants deny the allegations set forth in paragraph 73 of the counterclaim.

74. Counterdefendants deny the allegations set forth in paragraph 74 of the counterclaim.

75. Counterdefendants deny the allegations set forth in paragraph 75 of the counterclaim.

76. Answering paragraph 76 of the Counterclaim, Counterdefendants admit the allegations regarding the timing of the audited reports and the disclosure of the same. With respect to the remaining allegations set forth in paragraph, counterdefendants state that the audited reports speak for themselves and deny any factual allegations regarding what was disclosed in such audited reports unless such statements are expressly set forth in the audited reports.

77. Counterdefendants are unable to ascertain what facts are being alleged in paragraph 77 of the Counterclaim and, on that basis, deny the same.

78. Counterdefendants deny the factual allegations set forth in paragraph 78 of the counterclaim.

79. Counterdefendants deny paragraph 79 of the counterclaim.

80. Counterdefendants deny paragraph 80 of the counterclaim.

81. Counterdefendants deny paragraph 81 of the counterclaim.

82. Answering paragraph 82 of the Counterclaim, Counterdefendants state only that the Notice speaks for itself and deny the allegation that the document was designed with the intent to mislead or deceive.

83. Answering paragraph 83 of the counterclaim, counterdefendants state only that the documents attached as Exhibit 14 speak for themselves.

84. Answering paragraph 84 on of the counterclaim, counterdefendants state that the valuations reflected in Exhibit 14 speak for themselves.

85. Counterdefendants deny the factual allegations set forth in paragraph 85 of the counterclaim.

86. Counterdefendants state that the Notice referenced in paragraph 86 of the counterclaim speaks for itself.

87. Counterdefendants deny the factual allegations set forth in paragraph 87 of the counterclaim.

88. Counterdefendants deny the factual allegations set forth in paragraph 88 of the counterclaim.

89. Counterdefendants deny the factual allegations set forth in paragraph 89 of the counterclaim.

90. Counterdefendants deny the factual allegations set forth in paragraph 90 of the counterclaim.

91. Counterdefendants deny the factual allegations set forth in paragraph 91 of the counterclaim.

92. Counterdefendants deny the factual allegations set forth in paragraph 92 of the counterclaim.

93. Counterdefendants deny the factual allegations set forth in paragraph 93 of the counterclaim.

94. Counterdefendants deny the factual allegations set forth in paragraph 94 of the counterclaim.

95. Counterdefendants deny the factual allegations set forth in paragraph 95 of the counterclaim.

96. Counterdefendants deny the factual allegations set forth in paragraph 96 of the counterclaim.

97. Paragraph 97 of the counterclaim is a legal conclusion for which no answer is required; to the extent that paragraph 97 contains factual allegations that do require an answer, counterdefendants deny the same.

98. Paragraph 98 of the counterclaim is a legal conclusion for which no answer is required; to the extent that paragraph 98 contains factual allegations that do require an answer, counterdefendants deny the same.

99. Answering paragraph 99 of the counterclaim, counterdefendants state that Idaho Code Section 48-608(1) speaks for itself.

100. Answering paragraph 100 of the counterclaim, counterdefendants state that such paragraph was improperly pled in violation of Idaho Code Section 6-1604.

101. Paragraph 101 of the counterclaim does not contain any factual allegations that require a response; to the extent that any response is required, counterdefendants deny the same.

102. Counterdefendants deny the allegations set forth in paragraph 102 of the counterclaim.

103. Counterdefendants deny the allegations set forth in paragraph 103 of the counterclaim.

104. Answering paragraphs 104 – 110 of the Counterclaim, counterdefendants state that such paragraphs are directed only at a party who is protected by the bankruptcy automatic stay and that no answer is otherwise required.

To the extent that the prayer for relief section of the counterclaim contains any facts to which an answer is required, counterdefendants hereby deny the same.

AFFIRMATIVE DEFENSES

1. Counterclaimant has failed to state a claim upon which relief can be granted.
2. Counterclaimants claims are barred by the two year statute of limitations set forth in Idaho Code Section 48-619.
3. Counterclaimants counterclaims should be stricken in their entirety because they improperly plead a claim for punitive damages, in violation of Idaho Code Section 6-1604.

PRAYER FOR RELIEF

Counterdefendants hereby pray for relief as follows:

1. That the counterclaims be dismissed with prejudice and that counterclaimant take nothing thereby;

2. For reasonable costs and attorneys' fees incurred in defending the counterclaims under Idaho Code Section 12-120(3) and Idaho Code Section 12-121.

3. For such other relief as this Court deems just and proper.

DATED this 9th day of November, 2012.

RAINEY LAW OFFICE

Rebecca A. Rainey – Of the Firm
Attorneys for Plaintiff/Cross-Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of November, I caused to be served a copy of the foregoing **ANSWER** on the following, in the manner indicated below:

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

( ) Via U.S. Mail
( ) Via Facsimile – 949-588-7078
( ) Via Overnight Mail
( ) Via Hand Delivery
(X) Via e-mail

Rebecca A. Rainey

RECEIVED
DEC 10 2012
Ada County Clerk

NO. _____
A.M. 1101 FILED P.M. _____
DEC 10 2012
CHRISTOPHER D. RICH, Clerk
By ANNAMARIE MEYER
DEPUTY

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630
(949) 588-9222
(949) 588-7078 [fax]
maboling@earthlink.net
Defendant/Counter-Claimant/Third Party Plaintiff, in pro se

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT

FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, et al. Plaintiffs/Counter-Defendants, vs. MARK BOLING, Defendant/Counter-Claimant AND RELATED ACTIONS	Case No.: CV OC 1208669 **AFFIDAVIT OF MARK BOLING IN SUPPORT OF DEFENDANT/COUNTER-CLAIMANT'S MOTION TO COMPEL ARBITRATION** **If Required:** **Date: February 6, 2013** **Time: 2:00 p.m.** **Place: 200 W. Front St., Boise, ID**

I, Mark Boling, swear under oath that:

1. I am the Defendant/Counter-Claimant ("Boling") in the above-captioned matter.

2. I make this affidavit based upon my own personal knowledge unless otherwise indicated. If called upon as a witness, I could and would competently testify to these matters.

3. A true and correct copy of any and all exhibits identified herein are attached hereto and incorporated fully herein where identified or referenced.

4. Before February 2010, Boling had no prior business or personal relationship with any of the Plaintiffs/Counterdefendants.

5. On or about February 4, 2010, Boling received an initial package from Rob Ruebel, Regional Vice-President of Sales of Clearwater Real Estate Investments ("Clearwater") consisting of A) a bound Confidential Private Placement Memorandum Book # 08Note-A238 dated August 29, 2008 (Exh. 1), which included, inter alia, the Private Placement Memorandum (Exh. 1A ,"PPM"), a Guaranty (Exh. 2), and Supplements One and Two to the PPM (collectively, Exh. 3), and B) a cover letter dated February 1, 2010 and miscellaneous sheets about Clearwater Real Estate Investments (collectively, Exh. 4).

6. After receiving the initial package from Clearwater, Boling viewed and relied upon Clearwater's website at www.clearwaterrei.com that was disclosed on the letterhead from the initial package. The website disclosed that Clearwater Real Estate Investments, LLC owned or operated the website and implied by its content of ownership that Clearwater Real Estate Investments, LLC was a viable business entity authorized to do business in the state of Idaho. Boling was unable to access the web pages on Clearwater's website for investors because he was not as yet an investor.

7. On February 12, 2010, Boling executed and submitted a Subscription Agreement ("SA") (Exh. 5), and Boling paid the sum of $50,000 pursuant thereto as his personal investment in the Company's Note Program.

8. At the time of submitting his executed SA and $50,000 payment, Boling did not previously received from Respondents a copy of the Note dated August 29, 2008, Exhibit A thereto, the Third Supplement to the PPM dated January 20, 2010, or the 2009 Year-End Update dated March 19, 2010.

9. At the time of submitting his executed SA and $50,000 payment, Counterdefendants or their agents or principals had not disclose to Boling that a) Clearwater and Clearwater Real Estate Investments, LLC did not exist as business entities authorized to do business in the state of Idaho, b) RE Capital Investments, LLC (Guarantor) had a 55.84% membership interest and 50% voting interest in Clearwater REI, LLC (Manager), and c) RE Capital Investments, LLC (Guarantor) had a consulting agreement with Clearwater aka Clearwater Real Estate Investments, LLC for $8,500.00 per month.

10. On or about March 6, 2010, Boling received a cover letter dated March 1, 2010 (Exh. 6), an Acceptance of the Subscription Agreement (Exh. 5), a Certificate with an effective date of February 27, 2010 (Exh. 7), and a Note dated August 29, 2008 (Exh. 8) from Clearwater Real Estate Investments. No Exhibit A, listing the names of the Noteholders, including Boling, was attached or included with the Note that was delivered to Boling.

11. Boling relied on receiving Exhibit A to the Note, listing all Noteholders, as material because Boling would be made aware of the number of different Noteholders that may seek later principal redemption under the PPM and Note to determine his business decisions during the course of the Note Program. If Boling knew he would not receive a copy of Exhibit A to the Note identifying all Noteholders, he would not have made his investment.

12. On or about March 19, 2010, Clearwater Real Estate Investments sent to the Boling by mail a 2009 Year-End Update (Exh. 9) to keep the investors informed of the status of the Note Program. Two of the four loan projects were in default and/or in bankruptcy. The other two loan projects were having delays in the entitlement process.

13. On or about June 17, 2010, the Company disclosed its Independent Auditor's Report and Financial Statements for the calendar years 2008 and 2009 (Exh. 10).

14. On or about March 24, 2011, Clearwater Real Estate Investments sent to the Boling by mail a 2010 Year-End Update (Exhibit 11) to keep the investors informed of the status of the Note Program. Now, all five (5) outstanding loans were in default.

15. On or about August 19, 2011, the Company disclosed its Independent Auditor's Report and Financial Statements for the calendar years 2009 and 2010 (Exh. 12).

16. On or about October 26, 2011, the Company sent by mail a Notice to Note Holders (Exh. 13), which was received by Boling on November 4, 2011. The Notice states, "Note Holders can be optimistic of the collateral position of the Note Program today." The Notice further states that the amount of the interest payment distribution would be reduced for the months of November 2011, December 2011 and January 2012 and reassessed for February 2012.

17. On November 6, 2011, Boling sent the Company written notice to redeem 10% of his principal amount under the Transaction Documents and requested a current Balance Sheet of the Guarantor (Exh. 14 – Email String/Letters). The last Balance Sheet of the Guarantor disclosed to the Boling was dated December 31, 2008.

18. On November 10, 2011, Clearwater Real Estate Investments acknowledged receipt of Boling's liquidation request, placed Boling's request on a *priority list* with an acceptance date of November 7, 2011 and informed Boling that all liquidation requests have been suspended (Exh. 14 – Email String/Letters).

19. On December 1, 2011, Boling first obtained by email and reviewed a

copy of the Third Supplement to the PPM dated January 20, 2010 from Ross Farris, Director Marketing and Investor Relations for Clearwater. (Exh. 15)

20. The Third Supplement to the PPM states, inter alia, "[a]lthough the Guarantor's net worth of approximately, $53.4 million is lower than the net worth of $54 million it has covenanted to maintain under the Guaranty based on a Maximum Offering Amount of $20,000,000, in the event that the increased Maximum Amount of $21,900,000 is attained, the Guarantor's net worth does provide a principal coverage ratio of: (a) 1.2x, if a portion of the Guarantor's net worth is reserved to provide 1.5x coverage over principal amounts outstanding under the notes issued by Clearwater 2007 Notes Program, LLC (the "2007 Notes Program") (accounting for liquidation of $2,000,000 in principal amounts of the notes issued by the 2007 Notes Program as of December 31, 2009, with $18,000,000 remaining outstanding), and (b) 2.44x, if this reserve is not made (the Guarantor is not required to make this reserve). Attached as Exhibit A to the Third Supplement to the PPM was the RE Capital Balance Sheet dated December 31, 2009.

21. On December 14, 2011, Boling received a letter from the Company confirming that 1) the security for the loans were not cross-collateralized, 2) the Manager decides exclusively when to get appraisals for the Projects, 3) the 2010 Audited Report and financials of the Company were purportedly first available on May 1, 2011, 4) the initial PPM packet included the Third Supplement to the PPM, the Company has requested a final 2010 Balance Sheet from the Guarantor, and 5) the Company "cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders." (Exh. 14 – Email String/Letters)

22. On December 20, 2011, Boling spoke by telephone with Lori Fischer,

Controller of Clearwater Investment, who informed Boling that the 2010 Audited Report and financials of the Company were first available on or after August 29, 2011.

23. On December 20, 2011, Boling stated in an email to Clearwater Real Estate Investments: "If the Company maintains now and at the time of the initial PPM that it can alter or over-ride this expressed term regarding Callability on the basis that it has an obligation to ALL Note holders allowing the Company not to abide by this expressed term, then I would request that my subscription be immediately rescinded and the total principal amount of my note be restored." (Exh. 14 – Email String/Letters)

24. On or about January 12, 2012, Clearwater Real Estate Investments sent a letter to Note Holders postponing all 2011 liquidation requests until further notice. (Exh. 16)

25. On or about January 25, 2012, the Company sent a letter to Boling stating that it has "been in contact with RE Capital and are hopeful of receiving correspondence from them in the next 30 days. (Exh. 14 – Email String/Letters)

26. On February 2, 2012, Ross Farris, Director of Marketing and Investor Relations informed Boling by telephone that the reduction of interest payment was made pursuant to Section 3 of the Note and the suspension of liquidation rights was to protect all Noteholders. Boling informed Mr. Farris that he never received a copy of the Note until after submitting his Subscription Agreement and $50,000 payment to the Company. Boling further requested a copy of Exhibit A to the Note. Mr. Farris responded that he would obtain a copy of Exhibit A to the Note, but only with Boling's name on it and not the identity of all Noteholders. No Exhibit A to the Note was ever received by Boling. Mr. Farris also stated that all the business decisions for the Note Program are made by the management team of Clearwater REI, LLC.

27. On February 2, 2012, Boling sent to Clearwater by email a written Notice of Default on Interest payments for November 2011, December 2011, and January 2011, and a written Notice of Default on his liquidation rights and demanding that payment be made immediately or after a cure period, if necessary. (Exh. 14 – Email String/Letters)

28. On February 6, 2012, Boling received from Clearwater a cover letter and January Update dated January 31, 2012. (Exh. 17) The cover letter states: "the February payment will be 25% of the monthly interest distributed." The Update acknowledges: "Real Estate values have fallen dramatically nationwide."

29. On February 9, 2012, Boling received from Clearwater a Quarterly Statement ending December 31, 2011 (Exh 18) that sets forth the "Total Outstanding Principal of Master Promissory Note to Investors" as $21,810,000 and "Total Appraised Value of Collateral" as $25,100,000 and "Collateral valuations dated September 15, 2010, January 19, 2011 and September 21, 2011."

30. If before investing, Boling had been made aware of 1) the Note's contents that the purported accrual of interest payments, as compared with the actual payment of interest as expressed in the PPM, was to apply to his transaction with the Company, 2) the contents of the Third Supplement to the PPM that a) further restrictions were place on the Noteholder's right to redeem principal, and b) the Guarantor's net worth on December 31, 2009 was less than the covenanted amount set forth in the Guaranty, 3) the Guarantor's cash reserves was depleted before Boling received the PPM, 4) the Program's unstable loan portfolio as described in the 2009 Year-End Update, 5) Clearwater and Clearwater Real Estate Investment, LLC were not legitimate business entities authorized to do business in the state of Idaho, 6) the

Guarantor owned/controlled≥ 50% of the Manager, and/or 7) the Guarantor was receiving significant compensation from the Clearwater umbrella business, Boling would not have entered into the Subscription Agreement and invested in the purchase of the Note.

31. On February 3, 2012, I downloaded from the website www.clearwaterrei.com the terms of use web pages (Exh 19) that sets forth Clearwater Real Estate Investments, LLC as the business entity that owns, maintains and operates the website having the same physical address, email address and telephone numbers as Clearwater Real Estate Investments and the Counterdefendants. (Judicial Notice Requested, *I.R.E.* § 201 (b) and (c).)

32. Further on February 3, 2012, I performed an on-line search of the business entities, Clearwater Real Estate Investments, LLC and Clearwater Real Estate Investments with the Idaho Secretary of State website at www.accessidaho.org. Results were "No business entities found." (Exh 20) (Judicial Notice Requested, *I.R.E.* § 201 (b) and (c).)

33. On February 15, 2012 and out of abundance of caution, Boling filed a Demand for Commercial Arbitration with the American Arbitration Association ("AAA") against all named Counterdefendants and the Company and served said parties therewith regarding the acts and omissions set forth herein under the arbitration clause in the SA.

34. On or about March 8, 2012, Counterdefendants filed with the AAA and served their Answer Statement objecting to arbitrate the disputes set forth in the counterclaim and third party complaint on behalf of all named Counterdefendants, but

not the Company. Counterdefendants filed this action denying the existence of the agreement to arbitrate against them.

35. Boling has served all Plaintiffs/Counterdefendants with the counterclaims and discovery on the counterclaims is pending in this lawsuit.

36. On or about August 17, 2012, Counterdefendants served Boling with a Motion to Stay Arbitration in this case and denied the existence of the agreement to arbitrate.

DISCOVERY RECEIVED AFTER MOTION TO STAY ARBITRATION:

37. On June 25, 2012, I propounded and served by electronic service Interrogatories and Requests for Production of Documents, Sets No. One to Counterdefendants Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak and Rob Ruebel.

38. On August 8, 2012, the Court granted a stay of said discovery until the date of the hearing on Plaintiffs/Counterdefendants' Motion to Dismiss and Motion to Stay Arbitration that was set for September 12, 2012. By the time the Court had granted a stay of discovery, Counterdefendants had failed to timely respond to the written discovery. Thus, all objections were waived.

39. On September 12, 2012, Plaintiffs/Counterdefendants' Motion to Dismiss and Motion to Stay Arbitration were heard by the court. At that time, the Motion to Dismiss was denied and the Motion to Stay Arbitration was submitted to the Court. Pursuant to the Court's 8/8/12 Order, the discovery stay ended on September 12, 2012, the hearing date for the motions.

40. On October 16, 2012, this Court rejected Boling's declaration and issued its Decision and Order Re: Motion to Stay Arbitration in the case of *Clearwater v.*

Boling, Ada County District Court of Idaho, Case No. CV OC 1208669 ("*Clearwater* case") (Exh 21), stating, inter alia, "The Court notes that the relief sought by the plaintiffs is a determination that they are *not* subject to the requirement to arbitrate contained in the Subscription Agreement - if their position is correct, that hardly gives a basis for them to evade any direct liability they may have for consumer protection violations on the record as it currently exists, at a minimum, the Court could not address the merits of the claim on this record. * * * Until or unless additional evidence is presented to the Court as provided for by I.R.C.P. 43(e) that would warrant any other conclusion, the only parties which are required to arbitrate are Clearwater 2008 Note Program LLC and Mark Boling." (Underline added) As a courtesy, I did not pursued the discovery responses until the Court's issuance of an order on the Motion to Stay.

41. On October 25, 2012, I requested by email that Counterdefendants Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak and Rob Ruebel serve me with full and complete substantive responses to Interrogatories and Requests for Production of Documents, Sets No. One and produce all requested documents by 5:00 p.m. (pacific) on November 1, 2012.

42. On October 30, 2012, I received an email correspondence from counsel for Counterdefendants requesting that discovery responses for the pending written discovery be received on November 16, 2012.

43. Later on October 30, 2012, I sent an email correspondence to counsel for Counterdefendants agreeing that substantive discovery responses for the pending written discovery to be received on or before November 16, 2012.

44. I intended that the substantive responses to the pending discovery and production of documents would support the Motion to Compel Arbitration.

45. On November 16, 2012, I received responses to the pending discovery by Counterdefendants Cochran and Hansen, only.

46. In response to Interrogatory No. 29, "State the date YOU first became aware of the contents of the Balance Sheet(s) for RE Capital Investments, LLC for the 2010 calendar year," the responding parties responded, inter alia, "a final balance sheet for RE Capital for 2010 that would have been intended for disclosure to third parties that calendar year was never completed."

47. In response to Interrogatory No. 30, "State the date YOU first became aware of the contents of the balance Sheet(s) for RE Capital Investments, LLC for the 2011 calendar year," the responding parties responded, inter alia, "no efforts were made to create a balance sheet for RE Capital for the 2011 calendar year."

48. In response to Request for Production No. 33, "A most recent legible copy of Exhibit A to the Master Note dated August 29, 2008 that sets forth the IDENTITY of all Note Holders under the CLEARWATER 2008 NOTE PROGRAM," the responding parties responded "None exist."

49. On November 16, 2012, I received documents produced by Counterdefendants in response to the pending Requests for Production of Documents, Set No. One. The documents were Bates-labeled beginning with "CW" and included, inter alia, the following:

a) 11/8/07 Employment Agreements between Clearwater Real Estate Investments and Mr. Cochran, showing compensation related to performance of the Note Program(CW00670-672) (Exh 22);

b) 11/8/07 Employment Agreements between Clearwater Real Estate Investments and Mr. Ruebel, showing compensation related to performance of the Note

Program (CW00686-688) (Exh 23);

c) 1/1/08 Consulting agreement between Diamond B Asset Management, Inc. (Benak) and Clearwater Real Estate Investments (CW 00748-750), 1/1/08 Consulting agreement between Terron Investments, Inc. (Meyer) and Clearwater Real Estate Investments (CW 00751-753), and 1/1/09 Consulting agreement between RE Capital Investments, LLC (Benak and Meyer) and Clearwater Real Estate Investments (CW00754-756), which documents were all executed by Clearwater Real Estate Investments, LLC on behalf of Clearwater Real Estate Investments (collectively as Exh 24);

d) 1/1/09 Second Amendment to Operating Agreement of Clearwater REI, LLC showing RE Capital investments, LLC (Guarantor, owned by Benak and Meyer's LLCs) as a significant owner of Clearwater REI, LLC (the Manager) (CW00722-725) (Exh 25);

e) 10/17/11 Email correspondence and attachment from Ross Farris to Chad Hansen and Bart Cochran that shows Mssrs. Hansen and Cochran's personal involvement in managing the Note Program (CW00548-549, 667-669) (collectively, Exh 26).

50. On November 28, 2012, I received a "Certificate of Assumed Business Name" (without bates-label no.) filed July 24, 2012 with the Idaho Secretary of State's office and produced by Counterdefendants in response to the pending Requests for Production of Documents, Set No. One. (Exh 27)

51. During the week of November 26, 2012, I contacted the court clerk, Tara, by telephone to reserve a hearing date, if necessary, for the subject motion. On December 3, 2012, I spoke by telephone with the court clerk, Tara, and was informed

that the first available hearing date was February 6, 2013, at which time I reserved the hearing date for the subject motion and requested a telephonic appearance, if necessary.

Dated: 12/6/12

By: Mark Boling
MARK BOLING
Affiant/Defendant/Counter-Claimant

STATE OF CALIFORNIA)
County of ORANGE) :ss

I, MARK BOLING, being first duly sworn, deposes and says:

I am the Affiant/Defendant/Counter-Claimant in the above-captioned action. I have read the foregoing **AFFIDAVIT OF MARK BOLING IN SUPPORT OF DEFENDANT/COUNTER-CLAIMANT'S MOTION TO COMPEL ARBITRATION**, know the contents thereof, and that the same are true to the best of my knowledge, information or belief.

Dated: 12/6/12

Mark Boling

MARK BOLING, Affiant
Defendant/Counter-Claimant
21986 Cayuga Lane, Lake Forest, CA 92630

STATE OF CALIFORNIA)
County of ORANGE) :ss

Subscribed and Sworn on December 6, 2012 before me, Luis Hernandez a Notary Public, personally appeared Mark Boling, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within affidavit and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the affidavit is the person who acted and executed the affidavit.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Luis Hernandez

Residing at: 26916 La Paz Rd Aliso Viejo, CA 92656

Commission Expires: 11/03/2015

LUIS HERNANDEZ
Commission # 1959081
Notary Public - California
Orange County
My Comm. Expires Nov 3, 2015

EXHIBITS 1- 3

SEE BOOKMARKS

CLEARWATER
REAL ESTATE INVESTMENTS

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

CLEARWATER 2008 NOTE PROGRAM, LLC

$20,000,000 9.0% Notes
(Subject to increase to $40,000,000)

Minimum Investment: $50,000
Minimum Offering Amount: $1,000,000
Maximum Offering Amount: $20,000,000 (Subject to increase to $40,000,000)

Clearwater 2008 Note Program, LLC, an Idaho limited liability company, was organized to offer up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015, subject to increase to $40,000,000 at the sole discretion of the Company. The Company will use the proceeds from the offering of the Notes to provide secured financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, an Idaho limited liability company, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. Such projects may include, without limitation, acquisition, entitlement, and development of and construction on undeveloped real property and purchase or refinance of existing real estate assets. See "Business Plan." All loans made by the Company will be collateralized by a first position mortgage or deed of trust, as the case may be. The Company expects that most, if not all, loans will be made to its Affiliates for projects located in Idaho, Nevada, Arizona and California, although the Company reserves the right, at its sole discretion, to make loans in other areas. Each collateralized loan made by the Company will be described in a supplement to this Memorandum.

The Notes will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC. See "Description of Notes", "Clearwater REI, LLC" and the Guaranty attached hereto as Exhibit D. All Notes issued pursuant to this Memorandum will mature on December 31, 2015. Notes will be issued and will begin accruing interest on the first day immediately following the day on which the investment proceeds therefrom are received by the Company. Noteholders may elect, from time to time, to (a) receive monthly distributions of simple interest at the annual rate of 9.0%, or (b) re-invest accrued interest at a compounded annual interest rate of 9.0% (such reinvested interest will be added to and considered principal from and after re-investment). See "Description of the Notes – Interest Reinvestment Plan." Beginning December 31, 2011, the Company, at is sole discretion, may call all or any portion of the Notes, at any time, for 100% of the original principal amount of such Notes, plus accrued but unpaid interest, upon 90 days written notice to the Noteholders, without penalty. Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company. See "Description of the Notes." Capitalized terms not otherwise defined herein have the meanings given to them in the Glossary.

The Notes are being issued with a minimum investment of $50,000 and in additional denominations of $1,000; however, smaller purchases are available at the sole discretion of the Company.

	Price to Investors	Selling Commissions and Expenses[1]	Proceeds to the Company[2]
Minimum Investment[3]	$50,000	$ 4,650	$45,350
Maximum Offering Amount[4]	$20,000,000	$1,860,000	$18,140,000

(1) Notes will be offered and sold on a "best efforts" basis by broker-dealers who are members of FINRA. The members of the Selling Group will receive selling commissions of up to 7.0% of the Gross Proceeds. The amount of Selling Commissions may be reduced, however, if a lower commission rate is negotiated with a member of the Selling Group. The Managing Broker-Dealer will receive up to 2.3% of the Gross Proceeds as compensation and reimbursement for due diligence and marketing expenses up to 1.0% of which may be re-allowed to members of the Selling Group for marketing and due diligence expenses. The aggregate amount of Selling Commissions and Expense Reimbursements paid to members of the Selling Group will not exceed 9.3% of the Gross Proceeds. See "Use of Proceeds" Affiliates of the Company may receive Selling Commissions in connection with the sale of Notes. See "Conflicts of Interest." The Company, in its discretion, may accept purchases of Notes net of all or an agreed portion of the Selling Commissions from subscribers purchasing through a registered investment advisor, from subscribers for Notes who are affiliates of the Company or a member of the Selling Group.

(2) Amounts shown are proceeds after deducting selling commissions and allowance, but before deducting organizational and offering expenses and other expenses incurred in connection with the Offering and the Company's operations.

(3) The minimum purchase is $50,000 principal amount of Notes. The Company has the right, at its sole discretion, to waive the minimum purchase requirement.

(4) Subject to increase to $40,000,000 at the sole discretion of the Company. If the offering is increased to $40,000,000 the Selling Commission and Expenses in the table will be $3,720,000 and Proceeds to the Company will be $36,280,000.

This Memorandum is dated August 29, 2008

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

CLEARWATER 2008 NOTE PROGRAM, LLC
$20,000,000 9.0% Notes
(Subject to increase to $40,000,000)

Minimum Investment: $50,000
Minimum Offering Amount: $1,000,000
Maximum Offering Amount: $20,000,000 (Subject to increase to $40,000,000)

Clearwater 2008 Note Program, LLC, an Idaho limited liability company, was organized to offer up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015, subject to increase to $40,000,000 at the sole discretion of the Company. The Company will use the proceeds from the offering of the Notes to provide secured financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, an Idaho limited liability company, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. Such projects may include, without limitation, acquisition, entitlement, and development of and construction on undeveloped real property and purchase or refinance of existing real estate assets. See "Business Plan." All loans made by the Company will be collateralized by a first position mortgage or deed of trust, as the case may be. The Company expects that most, if not all, loans will be made to its Affiliates for projects located in Idaho, Nevada, Arizona and California, although the Company reserves the right, at its sole discretion, to make loans in other areas. Each collateralized loan made by the Company will be described in a supplement to this Memorandum.

The Notes will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC. See "Description of Notes", "Clearwater REI, LLC" and the Guaranty attached hereto as Exhibit D. All Notes issued pursuant to this Memorandum will mature on December 31, 2015. Notes will be issued and will begin accruing interest on the first day immediately following the day on which the investment proceeds therefrom are received by the Company. Noteholders may elect, from time to time, to (a) receive monthly distributions of simple interest at the annual rate of 9.0%, or (b) re-invest accrued interest at a compounded annual interest rate of 9.0% (such reinvested interest will be added to and considered principal from and after re-investment). See "Description of the Notes – Interest Reinvestment Plan." Beginning December 31, 2011, the Company, at is sole discretion, may call all or any portion of the Notes, at any time, for 100% of the original principal amount of such Notes, plus accrued but unpaid interest, upon 90 days written notice to the Noteholders, without penalty. Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company. See "Description of the Notes." Capitalized terms not otherwise defined herein have the meanings given to them in the Glossary.

The Notes are being issued with a minimum investment of $50,000 and in additional denominations of $1,000; however, smaller purchases are available at the sole discretion of the Company.

	Price to Investors	Selling Commissions and Expenses[1]	Proceeds to the Company[2]
Minimum Investment[3]	$50,000	$ 4,650	$45,350
Maximum Offering Amount[4]	$20,000,000	$1,860,000	$18,140,000

(1) Notes will be offered and sold on a "best efforts" basis by broker-dealers who are members of FINRA. The members of the Selling Group will receive selling commissions of up to 7.0% of the Gross Proceeds. The amount of Selling Commissions may be reduced, however, if a lower commission rate is negotiated with a member of the Selling Group. The Managing Broker-Dealer will receive up to 2.3% of the Gross Proceeds as compensation and reimbursement for due diligence and marketing expenses up to 1.0% of which may be re-allowed to members of the Selling Group for marketing and due diligence expenses. The aggregate amount of Selling Commissions and Expense Reimbursements paid to members of the Selling Group will not exceed 9.3% of the Gross Proceeds. See "Use of Proceeds" Affiliates of the Company may receive Selling Commissions in connection with the sale of Notes. See "Conflicts of Interest." The Company, in its discretion, may accept purchases of Notes net of all or an agreed portion of the Selling Commissions from subscribers purchasing through a registered investment advisor, from subscribers for Notes who are affiliates of the Company or a member of the Selling Group.
(2) Amounts shown are proceeds after deducting selling commissions and allowance, but before deducting organizational and offering expenses and other expenses incurred in connection with the Offering and the Company's operations.
(3) The minimum purchase is $50,000 principal amount of Notes. The Company has the right, at its sole discretion, to waive the minimum purchase requirement.
(4) Subject to increase to $40,000,000 at the sole discretion of the Company. If the offering is increased to $40,000,000 the Selling Commission and Expenses in the table will be $3,720,000 and Proceeds to the Company will be $36,280,000.

This Memorandum is dated August 29, 2008

An investment in Notes is hig peculative and involves substantial risks. Risk Factors" beginning on page 9 for a complete discussion of the risks, including, but not limited to, the following:

- there is no certainty as to an investment in Notes being profitable;
- underlying risks inherent to the individual real estate projects for which the proceeds are used, including the risks associated with residential and commercial development;
- risks of national, regional, and local economic downturn;
- the Notes are not a diversified investment; and
- there are various conflicts of interest among the Company, the Manager and their Affiliates.

The mailing address of the Company is c/o Clearwater REI, LLC, 1300 E. State Street, Suite 103, Eagle, Idaho 83616, Attention: Don Steeves. The telephone number of the Company is (208) 639-4488.

The Notes offered hereby have not been registered under the Securities Act or the securities laws of certain states and are being offered and sold in reliance on exemptions from the registration requirements of the Securities Act and such laws. The Notes are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and such laws pursuant to registration or exemption therefrom. In making an investment decision, investors must rely on their own examination of the person or entity creating the securities and the terms of the offering, including the merits and risks involved.

The Securities Act and the securities laws of certain jurisdictions grant purchasers of securities sold in violation of the registration or qualification provisions of such laws the right to rescind their purchase of such securities and to receive back the consideration paid. The Company believes that the Offering of Notes described in this Memorandum is not required to be registered or qualified. Many of these laws granting the right of rescission also provide that suits for such violations must be brought within a specified time, usually one year from discovery of facts constituting such violation and three years from the violation. Should any investor institute such an action on the theory that the Offering conducted as described herein was required to be registered or qualified, the Company contends that the contents of this Memorandum constituted notice of the facts constituting such violation.

No person has been authorized to give any information or make any representations other than those contained in this Memorandum, and, if given or made, such information or representations must not be relied upon as having been given by the offerors. This Memorandum does not constitute an offer or solicitation by anyone in any jurisdiction in which such an offer or solicitation is not authorized, or in which the person making such an offer is not qualified to do so, or to any person to whom it is unlawful to make an offer or solicitation.

Neither the information contained herein, nor any prior, contemporaneous or subsequent communication should be construed by the prospective investor as legal or tax advice. Each prospective investor should consult his own legal, tax and financial advisors to ascertain the merits and risks of the transactions described herein prior to purchasing the Notes.

FOR FLORIDA RESIDENTS

The securities referred to in this Memorandum have not been registered under the Florida Securities Act. If sales are made to five (5) or more investors in Florida, any Florida investor may, at his option, void any purchase hereunder within a period of three (3) days after he (a) first tenders or pays to the Company, an agent of the Company, or an escrow agent the consideration required hereunder or (b) delivers his executed Subscription Documents, whichever occurs later. To accomplish this, it is sufficient for a Florida investor to send a letter or telegram to the Company within such three (3) day period, stating that he is voiding and rescinding the purchase. If any investor sends a letter, it is prudent to do so by certified mail, return receipt requested, to ensure that the letter is received and to evidence the time of mailing.

FOR NEW HAMPSHIRE RESIDENTS

Neither the fact that a registration statement or an application for a license has been filed under Chapter 421-B of the New Hampshire Revised Statutes with the State of New Hampshire nor the fact that a security is effectively registered or a person is licensed in the State of New Hampshire constitutes a finding by the Secretary of State that any document filed under RSA-421-B is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the Secretary of State has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with the provisions of this paragraph.

TABLE OF CONTENTS

EXHIBITS

WHO MAY INVEST

The offer and sale of Notes is being made in reliance on an exemption from the registration requirements of the Securities Act. Accordingly, distribution of the Memorandum is strictly limited to persons who meet the requirements and make the representations set forth below. The Company reserves the right to declare any prospective Noteholder ineligible to purchase Notes based upon any information which may become known or available to the Company concerning the suitability of such prospective Investor, for any other reason or for no reason, in the Company's sole discretion.

The Notes are highly speculative, involve a very high risk, and are suitable only for persons of substantial financial means who have no need for liquidity in this investment. Notes will be sold only to prospective Noteholders who:

(1) purchase a minimum of $50,000 in Notes unless the Company, at its sole discretion, waives the minimum purchase requirement;

(2) represent in writing that they are "Accredited Investors" (as defined by Rule 501 of Regulation D under the Securities Act); and

(3) satisfy the investor suitability requirements established by the Company and as may be required under federal or state law.

Each prospective Noteholder must represent in writing that he meets, among others, **ALL** of the following requirements:

(a) He has received, read and fully understands this Memorandum, he is basing his decision to invest on this Memorandum, he has relied on the information contained in this Memorandum, and he has not relied upon any representations made by any other person;

(b) He understands that an investment in the Notes involves substantial risks and he is fully cognizant of, and understands, all of the risk factors relating to an investment in the Notes, including, without limitation, those risks set forth in the section of this Memorandum entitled "Risk Factors";

(c) His overall commitment to investments that are not readily marketable is not disproportionate to his individual net worth, and his investment in the Notes will not cause such overall commitment to become excessive;

(d) He has adequate means of providing for his financial requirements, both current and anticipated, and has no need for liquidity in this investment;

(e) He can bear, and is willing to accept, the economic risk of losing his entire investment in the Notes;

(f) He is acquiring the Notes for his own account and for investment purposes only and has no present intention, agreement or arrangement for the distribution, transfer, assignment, resale or subdivision of the Notes; and

(g) He is an Accredited Investor as defined in Rule 501 of Regulation D under the Securities Act.

In addition to certain institutional investors, a prospective Noteholder who meets one of the following tests will qualify as an "*Accredited Investor*:"

(1) the prospective Noteholder is a natural person who had individual income in excess of **$200,000** in each of the two most recent years, or joint income with that person's spouse in excess of **$300,000** in each of these years, and has a reasonable expectation of reaching the same income level in the current year;

(2) the prospective Noteholder is a natural person whose individual net worth, or joint net worth with that person's spouse, exceeds **$1,000,000** at the time of his investment in the Notes;

(3) the prospective Noteholder is an organization described under Section 501(c)(3) of the Code, a corporation, Massachusetts or similar business trust, or a partnership not formed for the specific purpose of acquiring the Notes, with total assets in excess of **$5,000,000**;

(4) the prospective Noteholder is an entity (including an IRA) in which all of the equity owners are Accredited Investors as defined in subparagraphs (1) and (2) above;

(5) the prospective Noteholder is a trust with total assets in excess of **$5,000,000**, not formed for the specific purpose of acquiring the Notes, the purchase of which is directed by a "sophisticated person" as defined in Rule 506(b)(2)(ii) of Regulation D under the Securities Act; or

(6) the prospective Noteholder is an employee benefit plan within the meaning of ERISA in which the investment decision is made by a plan fiduciary (as defined in Section 3(21) of ERISA) which is either a bank, savings and loan association, insurance company, or registered investment adviser; or the employee benefit plan has total assets in excess of **$5,000,000**; or it is a self-directed plan in which investment decisions are made solely by persons who are Accredited Investors.

"Net worth" is defined as the difference between total assets and total liabilities, including home, home furnishings and personal automobiles. In the case of fiduciary accounts, the net worth and/or income suitability requirements must be satisfied by the beneficiary of the account, or by the fiduciary, if the fiduciary directly or indirectly provides funds for the purchase of the Notes.

Representations with respect to the foregoing and certain other matters will be made by each prospective Noteholder in the Subscription Agreement. The Company will rely on the accuracy of such representations and may require additional evidence that the prospective Noteholder satisfies the applicable standards at any time prior to acceptance. Prospective Noteholders are not obligated to supply any information so requested by the Company, but the Company may reject a Subscription Agreement from any prospective Noteholder who fails to supply any information so requested. Prospective Noteholders who are unable or unwilling to make the foregoing representations may not purchase Notes.

The investor suitability requirements stated above represent minimum suitability requirements established by the Company for prospective Noteholders. However, satisfaction of these requirements will not necessarily mean that Notes are a suitable investment for the prospective Noteholder, or that the Company will accept the prospective Noteholder's Subscription Agreement. Furthermore, the Company, as appropriate, may modify such requirements at its sole discretion, and such modifications may raise the suitability requirements for prospective Noteholders.

No person has been authorized by the Company to make any representations or furnish any information with respect to the Company or the Notes other than as set forth in this Memorandum or other documents or information furnished by the Company upon request as described herein. This Memorandum contains summaries of certain other documents, which summaries are believed to be accurate, but reference is hereby made to the full text of the actual documents for complete information concerning the rights and obligations of the parties thereto. Such information necessarily incorporates significant assumptions, as well as factual matters. All documents relating to this Offering and related documents and agreements, if readily available to the Company, will be made available to a prospective Noteholder or representatives upon request to the Company. During the course of this Offering and prior to sale, each prospective Noteholder is invited to ask questions of and obtain additional information from the Company concerning the terms and conditions of this Offering, the Company, the Notes and any other relevant matters, including, but not limited to, additional information necessary or desirable to verify the accuracy of the information set forth in this Memorandum. The Company will provide the information to the extent it possesses such information or can obtain it without unreasonable effort or expense.

This Memorandum constitutes an offer only to the offeree whose name appears in the appropriate space on the cover page. Furthermore, this Memorandum does not constitute an offer or solicitation to anyone in any jurisdiction in which such an offer or solicitation is not authorized. This Memorandum has been prepared solely for the benefit of persons interested in the proposed private placement of the Notes offered hereby. Any reproduction or distribution of this Memorandum, in whole or in part, or the disclosure of any of its contents without the prior written consent of the Company is expressly prohibited. The recipient, by accepting delivery of this Memorandum, agrees to return this Memorandum and all documents furnished herewith to the Company or its representatives immediately upon request if the recipient does not purchase any Notes, or if this Offering is withdrawn or terminated.

The Notes are not suitable investments for a qualified plan, an IRA or other tax exempt entity. Therefore, this Memorandum does not discuss risks that may be associated with an investment in the Notes by a qualified plan, an IRA or other tax exempt entity.

If you do not meet the requirements described above, do not read further and immediately return this Memorandum to the Company. In the event you do not meet such requirements, this Memorandum does not constitute an offer to sell Notes to you.

Restrictions Imposed by the USA PATRIOT Act and Related Acts

The Notes may not be offered, sold, transferred or delivered, directly or indirectly, to any "Unacceptable Investor." "Unacceptable Investor" means any person who is a:

- Person or entity who is a "designated national," "specially designated national," "specially designated terrorist," "specially designated global terrorist," "foreign terrorist organization," or "blocked person" within the definitions set forth in the Foreign Assets Control Regulations of the U.S. Treasury Department;

- Person acting on behalf of, or any entity owned or controlled by, any government against whom the U.S. maintains economic sanctions or embargoes under the Regulations of the U.S. Treasury Department – including, but not limited to the "Government of Sudan," the "Government of Iran," the "Government of Libya," and the "Government of Syria";

- Person or entity who is within the scope of Executive Order 13224-Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001; or

- Person or entity subject to additional restrictions imposed by the following statutes or regulations and executive orders issued thereunder: the Trading with the Enemy Act, the Iraq Sanctions Act, the National Emergencies Act, the Antiterrorism and Effective Death Penalty Act of 1996, the International Emergency Economic Powers Act, the United Nations Participation Act, the International Security and Development Cooperation Act, the Nuclear Proliferation Prevent Act of 1994, the Foreign Narcotics Kingpin Designation Act, the Iran and Libya Sanctions Act of 1996, the Cuban Democracy Act, the Cuban Liberty and Democratic Solidarity Act and the Foreign Operation, Export Financing and Related Programs Appropriations Act or any other law of similar import as to any non-U.S. Country, as each such act or law has been or may be amended, adjusted, modified or reviewed from time to time.

HOW TO SUBSCRIBE

If, after carefully reading the entire Memorandum, obtaining any other information available and being fully satisfied with the results of pre-investment due diligence activities, a prospective Noteholder would like to purchase Notes, a prospective Noteholder should complete and sign the attached Subscription Agreement. The full purchase price for the Notes must be paid by check upon submission of the Subscription Agreement for the Notes. The minimum purchase amount is $50,000, although the Company may lower the minimum purchase requirement at its sole discretion.

Instructions for subscribing for the Notes are in the Subscription Agreement. Pending receipt and acceptance of subscriptions for the Minimum Offering Amount, all subscription payments received for Notes will be deposited in the escrow account at Home Federal Bank no later than the next business day after receipt by the Company. If the Minimum Offering Amount has not been received and accepted by December 31, 2008 (which may be extended to June 30, 2009 in the Company's sole discretion), none of the Notes will be sold and the amount each prospective Noteholder paid will be promptly returned to in full.

Subscription Agreements and all attachments should be mailed or delivered to the Company at:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Don Steeves

All funds should be mailed, delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Don Steeves

Wire Instructions:
Account Number: 1001001602349
Routing/ABA Number: 324170140
Account Name: Clearwater 2008 Note Program, LLC

Upon receipt of the signed Subscription Agreement, verification of the prospective Noteholder's investment qualifications, and acceptance of the prospective Noteholder's subscription by the Company (in the Company's sole discretion), the Company will notify each prospective Noteholder of receipt and acceptance of the subscription. In the event the Company does not accept a prospective Noteholder's subscription for the Notes for any reason, the Company will promptly direct Home Federal Bank to return or cause to be returned the escrowed funds to such subscriber.

An escrow account at Home Federal Bank will be established to hold the proceeds of this Offering. Home Federal Bank has not recommended nor provided any advice in connection with the purchase of the Notes. Upon written instruction by the Company and upon obtaining the Minimum Offering Amount, the funds in the escrow account will be released to the operating account of the Company. For purposes of calculating whether the Minimum Offering Amount has been reached, Notes sold at a discount will be considered sold at the full purchase price of $50,000.

Acceptance of Subscriptions

The Company may, at its sole discretion, accept or reject any Subscription Agreement, in whole or in part, for a period of 30 days after receipt of the Subscription Agreement. Any Subscription Agreement not accepted within 30 days of receipt shall be deemed rejected. The Company may terminate this Offering at any time, for any reason or no reason, at its sole discretion.

OFFERING SUMMARY

The following summary provides certain limited information about the Company, the Notes and this Offering. It should be read in conjunction with, and is qualified in its entirety by, the detailed information appearing elsewhere in this Memorandum. **You are required to read this entire Memorandum and whatever additional information you request before making an investment in the Notes.**

The Offering

Securities Offered:	The securities being offered hereby are debt investments issued by the Company. The Company is offering $20,000,000 aggregate principal amount of 9.0% Notes due December 31, 2015, subject to increase to $40,000,000 the sole discretion of the Company. The Notes will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC. See "Description of the Notes."
Use of Proceeds:	The Company will use the proceeds from the offering of the Notes to provide secured financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, an Idaho limited liability company, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. Such projects may include, without limitation, acquisition, entitlement, and development of and construction on undeveloped real property and purchase or refinance of existing real estate assets. See "Estimated Use of Proceeds" and "Business Plan."
Guaranty:	The repayment of the principal amount of the Notes (which principal includes re-invested interest) will be guaranteed by RE Capital Investments, LLC. See the Guaranty attached hereto as Exhibit D, "Description of the Notes."
Investor Suitability Requirements:	This Offering is strictly limited to Accredited Investors (as defined under Rule 501 of Regulation D under the Securities Act) who meet certain minimum financial and other requirements. Purchasers residing in certain states may need to meet additional standards. The Company at its sole and absolute discretion reserves the right to approve or disapprove each prospective Noteholder. See "Who May Invest."
Minimum Purchase:	The Notes are being issued with a minimum investment of $50,000 and in additional denominations of $1,000; however, smaller investments may be available at the sole discretion of the Company. See "Plan of Distribution."
Minimum Offering Amount:	The Minimum Offering Amount of the Notes is $1,000,000. If the Minimum Offering Amount has not been raised by December 31, 2008 (which may be extended to June 30, 2009 at the sole discretion of the Company), none of the Notes will be sold and the amount you paid will be promptly returned to you in full. See "Plan of Distribution – The Offering."
Offering Termination Date:	The Company will offer Notes until the earlier of the date on which the Maximum Offering Amount has been raised or December 31, 2008, which may be extended to June 30, 2009 at the sole discretion of the Company.
Risks:	An investment in Notes is highly speculative and involves substantial risks. See "Risk Factors" beginning on page 9 for a complete discussion of the risks, including, but not limited to, the following: • there is no certainty as to an investment in Notes being profitable; • underlying risks inherent to the individual real estate projects for

which the proceeds are used, including the risks associated with residential and commercial development;
- risks of national, regional, and local economic downturn;
- the Notes are not a diversified investment; and
- there are various conflicts of interest among the Company, the Manager and their Affiliates.

The Company

Organization: The Company is a newly-formed Idaho limited liability company. The Company will use the proceeds from the sale of the Notes to provide secured financing for various real estate acquisition and development projects. See "Business Plan" and "Management of the Company."

Manager: Clearwater REI, LLC, an Idaho limited liability company, will act as the Manager. The Manager's address is 1300 E. State Street, Suite 103, Eagle, Idaho 83616, and its telephone number is (208) 639-4488. See "The Manager."

Interest Reinvestment Program: Noteholders may choose one of two options for the interest earned on their Notes:

- Interest Payment: Noteholders may elect to receive monthly interest payments in an amount equal to 9.0% simple interest on their principal investment. All distributions will paid in arrears on the fifteenth day of each month, beginning with the month following the month in which the Notes are issued.
- Interest Reinvestment Program (IRP): By giving written notice to the Company of their desire to do so not later than November 30, Noteholders may elect to have their interest reinvested and compounded monthly beginning on the first day of the year immediately following the date on which such notice was received by the Company. Reinvested interest will be compounded at the annual rate of 9.0%. Interest that is reinvested will be added to and considered part of the principal amount of the Note at the end of each calendar month.

Interest Payments: The Company intends to: (a) pay simple or compound interest at the annual rate of 9.0% which interest will accrue at the end of each month during the term of the Notes and will be distributed or reinvested depending on the elections of the Noteholders; and (b) by December 31, 2015 return the principal amount plus all accrued but unpaid interest thereon to the Noteholders. **There is no assurance that these objectives will be achieved.** See "Description of the Notes."

Debt Obligations: Payment of all interest and return of the principal amount to Noteholders is the obligation of the Company. RE Capital Investments, LLC will guarantee repayment of the original principal amount of the Notes. Interest on the Notes will accrue at the end of each month during the term of the Notes and will be distributed or reinvested depending on the elections of the Noteholders. See "Clearwater REI, LLC." and "Description of the Notes."

Callability: Beginning December 31, 2011, the Company, at is sole discretion, may call all or any portion of the Notes, at any time, for 100% of the original principal amount of such Notes, plus accrued but unpaid interest, upon 90 days written notice to the Noteholders, without penalty.

Liquidity:	Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company. Notwithstanding the foregoing, upon the death of a Noteholder, the personal representative of such Noteholder may call the Note of such Noteholder and will receive the principal amount of such note, plus all accrued but unpaid principal thereon by giving written notice to the Company not less than 90 days following the date of death of such Noteholder. Interest will be payable through the date on which the principal is received by the Noteholder's personal representative and all principal and interest will be paid by the Company not later than 30 days following receipt of such notice.
Reports:	Annual audited financial and operational reports and annual tax information of the Company will be provided to the Noteholders. See "Reports to Noteholders."
Federal Tax Consequences:	It is anticipated that any and all federally taxable income resulting from an investment in Notes will be taxable at ordinary income tax rates and not at capital gains tax rates. See "Federal Income Tax Consequences."

RISK RELATING TO FORWARD LOOKING STATEMENTS

Certain matters discussed in this Memorandum, are forward-looking statements. The Company has based these forward-looking statements on its current expectations and projections about future events. These forward-looking statements are subject to risks, uncertainties and assumptions about the secured financings and other investment made by the Company, including, among other things, factors discussed under the heading "Risk Factors" in this Memorandum and the following:

- economic outlook;
- capital expenditures;
- cost reduction;
- cash flow;
- financing activities; and
- related industry developments, including trends affecting the Company's financial condition and results of operations.

The Company intends to identify forward-looking statements in this Memorandum by using words or phrases such as "anticipates," "believes," "estimates," "expects," "intends," "objective," "plan," "predict," "project" and "will be" and similar words or phrases, or the negative thereof or other variations thereof or comparable terminology. All forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the actual transactions, results, performance or achievements of the Company to be materially different from any future transactions, results, performance or achievements expressed or implied by such forward-looking statements. The cautionary statements set forth under the caption "Risk Factors" and elsewhere in this Memorandum identify important factors with respect to such forward-looking statements, including the following factors that could affect such forward-looking statements:

- national and local economic and business conditions that, among other things, will affect demand for properties and the availability and terms of financing;
- underlying real estate investment risks;
- the availability of debt and equity capital; and
- governmental approvals, actions and initiatives, including the need for compliance with environmental and safety requirements, and changes in laws and regulations or the interpretation thereof.

Although the Company believes the expectations reflected in such forward-looking statements are based upon reasonable assumptions, there is no assurance that the Company's expectations will be attained or that any deviations will not be material. The Company undertakes no obligation to publicly release the result of any revisions to these forward-looking statements that may be made to reflect any future events or circumstances.

In addition, any projections and representations, written or oral, which do not conform to the projections contained in this Memorandum, must be disregarded, and their use is a violation of law. The projections contained in or referenced by this Memorandum are based upon specified assumptions. If these assumptions are incorrect, the projections also would be incorrect. No representation or warranty can be given that the estimates, opinions or assumptions made in or referenced by this Memorandum will prove to be accurate. Prospective Noteholders should carefully review the assumptions set forth in or referenced by this Memorandum.

RISK FACTORS

An investment in the Notes is highly speculative and is suitable only for persons who are able to evaluate the risks of the investment. An investment in the Notes should be made only by persons able to bear the risk of and to withstand the total loss of their investment. In addition to the factors set forth elsewhere in this Memorandum and general investment risks, prospective Noteholders should consider the following risks before making a decision to purchase the Notes.

General Risks

Risks of No Guaranteed Return. There is no assurance or guarantee that the cash flow, profits or capital of the Company will be sufficient to pay all interest and repay principal on the Notes. Although RE Capital Investments, LLC will guarantee the Company's obligation to repay the original principal amount of the Notes there is no assurance that RE Capital Investments, LLC will be able to satisfy its obligations pursuant to such guaranty.

Risks Regarding the Manager. The Manager and Affiliates control other real estate development projects. The Manager and Affiliates may, in the future, become involved in other real estate development projects and may guarantee other equity or debt offerings to finance current or future development projects, which may have risk associated with those projects. If the Manager is required to support future guarantees on other debt obligations or otherwise, the Manager may not have sufficient funds or resources to assist the Company and perform its duties as the Manager.

New Venture. The Company is a new entity with no operating history. The Company is subject to the risks involved with any speculative new venture. No assurance can be given that the Company will be profitable.

Risk of Company's Related Party Lending and Thin Capitalization. The Company is a newly formed Idaho limited liability company formed to issue the Notes and provide secured financing for investments in real estate with a focus on development projects primarily to Affiliates of the Company. Since the Company is newly formed, it is thinly capitalized. Because of the thin capitalization, the Company will not have sufficient assets beyond its interest in the secured loans it makes, if any, to make payments on the Notes.

Speculative Investment; No Control of Possible Offering Expansion. The Company's goals are highly speculative, and there is no assurance that the Company will be able to meet any of its goals. Noteholders should be aware that they may not earn a substantial return on their investment and may, in fact, lose their entire investment.

Reliance on Management. All decisions regarding management of the Company's affairs will be made exclusively by the Manager and not by any of the Noteholders. Accordingly, you should not buy Notes unless you are willing to entrust all aspects of management to the Manager or its successor(s). You should carefully evaluate the personal experience and business performance of the Company, Manager and its principals and the financial condition of the Manager. See "The Manager" below. The Manager may retain independent contractors to provide various services to the Company. The independent contractors will have no fiduciary duty to the Noteholders, and may not perform as expected.

Absence of Note Rating. The Company has not applied and does not intend to apply to any creditworthiness rating agency for a rating on the Notes. Therefore, any comparison made or conclusion drawn regarding the nature and type of the Notes, as opposed to a rated debt obligation, would be at the risk of the individual prospective Investor.

Absence of Public Market; Nonliquidity; Market Value. The Notes will not be listed on any national securities exchange or included for quotation through an inter-dealer quotation system of a registered national securities association. The Notes constitute new issues of securities with no established trading market. Furthermore, it is not anticipated that there will be any regular secondary market following the completion of the offering of the Notes. Therefore, an investment in the Notes should be considered nonliquid. In addition, even in the unlikely event that a secondary market for the Notes were to develop, no assurance can be given that the initial offering prices for the Notes will continue for any period of time. The market value of the Notes might be discounted from their initial offering prices, depending on prevailing interest rates, the market for similar securities, and other factors. Accordingly, the Notes should be purchased for their projected returns only and not for any resale potential, which may or may not exist.

Absence of Third-Party Registrar and Trustee. The Company, as the designated Registrar, will maintain the Note Register and record all transfers of Notes. The Company may have a conflict of interest in serving as the Registrar, and the absence of a third-party Registrar may result in less protection to Noteholders than might be provided by a third-party Registrar. There will also not be any third-party trustee for the Notes. Noteholders will rely upon the Company, its officers, and its Affiliates to invest the Note proceeds wisely and profitably.

Conflicts of Interest. Conflicts of interest between the Company and the various roles, activities and duties of the Manager and its Affiliates may occur from time to time. The principals of the Manager and its Affiliates are employed independently of the Company and will engage in other activities, some of which may compete with the Company. The Manager will have conflicts of interest in allocating management time, services and functions between the Company and other current and future activities. The Manager believes that it will have sufficient staff, consultants, independent contractors and business and property managers to perform adequately its duties. The Noteholders will not have any interest in any future entities or business ventures formed or developed by the Manager or any of its Affiliates. Any conflict of interest may result in the rights of the Company not being adequately protected to the detriment of its Noteholders. None of the agreements or arrangements, including those relating to compensation, between the Company, the Manager or their Affiliates, are the result of arm's-length negotiations. See "Conflicts of Interest" below.

There are general risks of investment in the portfolio properties. The economic success of an investment in the Notes will depend upon the results of operations of the properties that secure the Company's loans, which will be subject to those risks typically associated with investments in real estate. Fluctuations in vacancy rates, rent schedules and operating expenses can adversely affect operating results or render the sale or refinancing of a portfolio property difficult or unattractive. No assurance can be given that certain assumptions as to the future levels of occupancy of the properties, cost of tenant improvements or future costs of operating a portfolio property will be accurate since such matters will depend on events and factors beyond the control of the Manager. Such factors include continued validity and enforceability of the leases, vacancy rates for properties similar to the portfolio properties, financial resources of tenants and rent levels near the portfolio properties, adverse changes in local population trends, market conditions, neighborhood values, local economic and social conditions, supply and demand for property such as the portfolio properties, competition from similar properties, interest rates and real estate tax rates, governmental rules, regulations and fiscal policies, the enactment of unfavorable real estate, rent control, environmental or zoning law, and hazardous material law, uninsured losses, effects of inflation, and other risks.

A general economic downturn or regional economic softness could adversely affect the economic performance of the Company's loans. Prospective Noteholders should be aware that periods of weak economic performance in the United States could adversely affect the properties that secure the Company's loans. In addition, softness in a regional or state economy could materially and adversely impact the actual or projected rental rates and operations of properties in that area and therefore the ability to sell these properties on favorable terms.

Properties securing the Company's loans may not meet projected occupancy. If the tenants in the properties securing the Company's loans do not renew or extend their leases or if tenants terminate their leases, the operating results of the properties could be substantially and adversely affected by the loss of revenue and possible increase in operating expenses not reimbursed by the tenants. There can be no assurance that the properties will be substantially occupied at projected rents. The Company anticipates a minimum occupancy rate for the properties, but there can be no assurance that the properties will maintain the minimum occupancy rate or meet the Company's anticipated lease-up schedule. In addition, lease-up of the unoccupied space may be achievable only at rental rates less than those anticipated by the Company.

Properties securing the Company's loans may contain toxic and hazardous materials. Federal, state and local laws impose liability on a landowner for releases or the otherwise improper presence on the premises of hazardous substances. This liability is without regard to fault for, or knowledge of, the presence of such substances. A landowner may be held liable for hazardous materials brought onto the property before it acquired title and for hazardous materials that are not discovered until after it sells the property. Similar liability may occur under applicable state law. If any hazardous materials are found within a property in violation of law at any time, the owner may be liable for all cleanup costs, fines, penalties and other costs. This potential liability will continue after the owner sells the property and may apply to hazardous materials present within the property before the owner acquired the property. If losses arise from hazardous substance contamination which cannot be recovered from a responsible party, the financial viability of that property may be substantially affected. It is possible that the property securing a loan made by the Company will have known or unknown environmental problems which may adversely affect the Company.

Properties securing the Company's loans may contain mold. Mold contamination has been linked to a number of health problems, resulting in recent litigation by tenants seeking various remedies, including damages and ability to terminate their leases. Originally occurring in residential property, mold claims have recently begun to appear in commercial properties as well. Several insurance companies have reported a substantial increase in mold-related claims, causing a growing concern that real estate owners might be subject to increasing lawsuits regarding mold contamination. No assurance can be given that a mold condition will not exist at one or more of the properties securing the Company's loans, with the risk of substantial damages, legal fees and possibly loss of tenants. It is unclear whether such mold claims would be covered by the customary insurance policies to be obtained for the owners of the properties.

The owners of the properties securing the Company's loans will receive limited representations and warranties from the seller. The properties will generally be acquired with limited representations and warranties from the sellers regarding the condition of the property, the status of leases, the presence of hazardous substances, the status of governmental approvals and entitlements and other significant matters affecting the use, ownership and enjoyment of the property. As a result, if defects in the property or other matters adversely affecting the property are discovered, the owner may not be able to pursue a claim for damages against the seller of the property. The extent of damages that the owner may incur as a result of such matters cannot be predicted, but potentially could result in a significant adverse affect on the owner's ability to pay the Company and the value of the collateral.

Private Offering and Liquidity Risks

Maximum Proceeds May Not Be Raised. The Company is seeking gross proceeds from this Offering of a minimum of $1,000,000 and up to a maximum of $20,000,000, subject to increase to $40,000,000 at the sole discretion of the Company. There can be no assurances that the Maximum Offering Amount will be raised. The Company may terminate the Offering at any time at its sole discretion.

Determination of Note Price. The purchase price of the Notes has been arbitrarily determined and is not the result of arm's-length negotiations. The price of the Notes was determined primarily by the capital needs of the Company and bears no relationship to any established criteria of value such as book value or earnings per share of the Company, or any combination thereof. Further, the price of the Notes is not based on past earnings of the Company. No valuation or appraisal of the Company's potential business has been prepared.

Limited Transferability of Notes. To buy Notes prospective Noteholders must represent that they are acquiring the Notes for investment and not with a view to distribution or resale, that potential Noteholders understand the Notes are not freely transferable and, in any event, that they must bear the economic risk of investment in the Notes for an indefinite period of time because the Notes have not been registered under the Securities Act or applicable state "Blue Sky" or securities laws; and the Notes cannot be sold unless they are subsequently registered or an exemption from such registration is available and unless you comply with the other applicable provisions of the Note, this Memorandum and any subscription documents. There is no public or other trading market for the Notes, and it is highly unlikely that any market will develop. Thus, except for the limited provision for liquidity, prospective Noteholders cannot expect to be able to liquidate their investments. Further, the sale of the Notes may have adverse federal income tax consequences. The transfer of Notes requires the prior written consent of the Manager. There is no guarantee that the Manager will consent to any transfer.

Unregistered Offerings. The offering of the Notes will not be registered with the SEC under the Securities Act or with the securities agency of any state. The Notes are being offered in reliance on an exemption from the registration provisions of the Securities Act and state securities laws applicable to offers and sales to investors meeting the investor suitability requirements set forth herein. See "Who May Invest." If the Manager, the Company, or the members of the Selling Group should fail to comply with the requirements of such exemption, Noteholders may have the right to rescind their purchase of the Notes. This might also occur under the applicable state securities or "Blue Sky" laws and regulations in states where the Notes will be offered without registration or qualification pursuant to a private offering or other exemption. If a number of Noteholders were successful in seeking rescission, the Company and the Manager would face severe financial demands that would adversely affect the Company as a whole and, thus, the investment in the Notes by the remaining Noteholders.

Lack of Agency Review. Since the offering of the Notes is a private offering and, as such, is not registered under federal or state securities laws, prospective Noteholders do not have the benefit of review of this Memorandum by the SEC or any state securities commission. The terms and conditions of the Offering may not comply with the guidelines and regulations established for real estate programs that are required to be registered and qualified with those agencies.

Purchase of Notes by the Manager and/or its Affiliates. The Manager and/or its Affiliates may, in their sole discretion, buy Notes for any reason deemed appropriate by them. However, they will not acquire Notes prior to the Minimum Offering Amount having been sold. Any purchase of Notes by the Manager or its Affiliates will be on the same terms as other investors, except that it may be made net of commissions. Upon any such acquisition of Notes, the Manager or its Affiliates will have the same rights as other Noteholders, including the right to vote on all matters subject to the vote of Noteholders. The Manager and its Affiliates will acquire any Notes for their own accounts and not with a view towards the resale or distribution of such Notes. The Manager and its Affiliates will not acquire Notes until the Minimum Offering Amount has been reached.

No Legal Representation of Noteholders. Each Noteholder acknowledges and agrees that Counsel representing the Company, the Manager and their Affiliates, does not represent and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing any or all of the Noteholders in any respect.

Investment by Tax-Exempt Noteholders. In considering an investment in the Notes of a portion of the assets of a trust of a pension or profit-sharing plan qualified under Section 401(a) of the Code and exempt from tax under Section 501(a), a fiduciary should consider if: (a) the investment satisfies the diversification requirements of Section 404 of ERISA; (b) the investment is prudent, since the Notes are not freely transferable and there may not be a market created in which the fiduciary can sell or otherwise dispose of the Notes; and (c) the Notes or the underlying assets owned by the Company are "plan assets" under ERISA. See "Investment by Qualified Plans and IRAs" below.

Loss on Dissolution and Termination. In the event of dissolution or termination of the Company as provided in the operating agreement of the Company, the proceeds realized from the liquidation of the Company's assets will be distributed among the Noteholders, members and certain amounts owed to the Manager, or its Affiliates, but only after the satisfaction of the claims of third-party creditors of the Company. The ability of a Noteholder to recover all or any portion of the investment under such circumstances will, accordingly, depend on the amount of net proceeds realized from the liquidation and the amount of claims to be satisfied therefrom. There can be no assurance that the Company will recognize any gains or realize net proceeds on liquidation.

Limitation of Liability/Indemnification of the Manager. The Manager and its attorneys, agents and employees may not be liable to the Company or the Members for errors of judgment and other acts or omissions not constituting gross negligence or willful malfeasance as a result of certain indemnification provisions in the operating agreement of the Company. A successful claim for indemnification would deplete the Company's assets by the amount paid.

Risks Relating to Conflicts of Interest

Loans to Affiliates. Most, if not all, of the loans to be made by the Company with the proceeds of this Offering will be made to Affiliates of the Company and the Manager. The interests of the Noteholders and the borrowers may differ materially with respect to the repayment of the Notes, and the Manager will be in a position to make decisions that could potentially be adverse to the Noteholders' interests in the Notes.

Activities outside of the Company that could cause conflicts of interest. The principals of the Manager and its Affiliates are employed independently of the Company and are engaged in activities other than this Offering. The Company and Affiliates will have conflicts of interest in allocating time, services and functions between various existing and future enterprises. The Manager's Affiliates may organize other business ventures that may compete directly with the Company. Further, the Company and its Affiliates have common ownership and management personnel which may result in material conflicts of interest to the possible detriment of the Noteholders. See "Conflicts of Interest."

Common ownership among the Manager and its Affiliates. The Manager and its Affiliates share common management. This may lead to a conflict of interest between their various roles as owners or officers of the Manager and its Affiliates. See "Conflicts of Interest."

The Company, the Manager and their Affiliates will receive compensation. The Company, the Manager and their Affiliates are entitled to receive certain significant fees and other significant compensation, payments and reimbursements from the sale of the Notes. See "Compensation of the Company, the Manager and their Affiliates."

USE OF PROCEEDS

The estimated sources and uses of funds in the Offering are as follows:

	Minimum Offering		Maximum Offering		Increased Offering Amount	
	Amount	Percent	Amount	Percent	Amount	Percent
SOURCE OF FUNDS						
Gross Proceeds	$ 1,000,000	100.00%	$ 20,000,000	100.00%	$ 40,000,000	100.00%
USE OF FUNDS	$ 1,000,000	100.00%	$ 20,000,000	100.00%	$ 40,000,000	100.00%
Offering Expenses						
Selling Commissions[1]	$ 93,000	9.30%	$ 1,860,000	9.30%	$ 3,720,000	9.30%
Organization and Offering[2]	$ 4,000	0.40%	$ 80,000	0.40%	$ 160,000	0.40%
Sponsor Compensation	$ 25,500	2.55%	$ 510,000	2.55%	$ 1,020,000	2.55%
Net Proceeds	$ 877,500	87.75%	$ 17,550,000	87.75%	$ 35,100,000	87.75%

[1] (1) Notes will be offered and sold on a "best efforts" basis by broker-dealers who are members of FINRA. The members of the Selling Group will receive selling commissions of up to 7.0% of the Gross Proceeds. The amount of Selling Commissions may be reduced, however, if a lower commission rate is negotiated with a member of the Selling Group. The Managing Broker-Dealer will receive up to 2.3% of the Gross Proceeds as compensation and reimbursement for due diligence and marketing expenses up to 1.0% of which may be re-allowed to members of the Selling Group for marketing and due diligence expenses. The aggregate amount of Selling Commissions and Expense Reimbursements paid to members of the Selling Group will not exceed 9.3% of the Gross Proceeds. See "Use of Proceeds" Affiliates of the Company may receive Selling Commissions in connection with the sale of Notes. See "Conflicts of Interest." The Company, in its discretion, may accept purchases of Notes net of all or an agreed portion of the Selling Commissions from subscribers purchasing through a registered investment advisor, from subscribers for Notes who are affiliates of the Company or a member of the Selling Group.

[2] Organization and Offering includes, but is not limited to, expense reimbursements, legal fees, printing and sales and marketing fees.

BUSINESS PLAN

The Company will use the proceeds from the offering of Notes to provide first mortgage financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. Such projects may include, without limitation; acquisition, entitlement, and development of and construction on undeveloped real property and purchase or refinance of existing real estate assets. The Company's loans will be collateralized by a first position mortgage or first deed of trust only. The Company expects that most, if not all, loans will be made to its Affiliates for projects located in Idaho, Arizona, California, and Nevada although the Company reserves the right, at its sole discretion, to make loans outside of those areas.

Real estate opportunities often do not allow time to secure bank or other financing. The Company will use the proceeds from the offering of Notes to provide the capital required in lieu of bank or other financing. Following closing, the Company intends to put permanent debt or equity in place following the acquisition or development and/or the properties will be sold making the Company's note funds revolving.

Investment Committee

Each proposed loan will be evaluated by a five member Investment Committee. The Investment Committee will apply the criteria detailed below in making a decision about whether to fund any proposed loan. No loan will be made by the Company without the prior approval of the Investment Committee. See "Management of the Company – The Manager – Investment Committee."

Investment Criteria

In order to qualify for loans from the Company, each borrowing entity will be required to provide a loan request detailing their needs and additionally will be required to satisfy additional requirements. The primary financial requirement is that the maximum loan to value, at the time of each loan is made, is no greater than the following:

- The loan to value ratio for pre-entitled land will not exceed 65%.
- The loan to value ratio will not exceed 75% for entitled land.
- The loan to value ratio will not exceed 80% for construction and existing commercial or residential structures.

The loan to value ratio will be defined by an MAI appraisal. In absence of an MAI appraisal, the loan to value ratio will be evidenced by a broker's opinion of value or by the Company's determination of value through the utilization of industry acceptable valuation methods. Other requirements that must be met by each borrowing entity will be at the discretion of the Investment Committee. The loan will be secured as a First Mortgage or First Deed of Trust on real property.

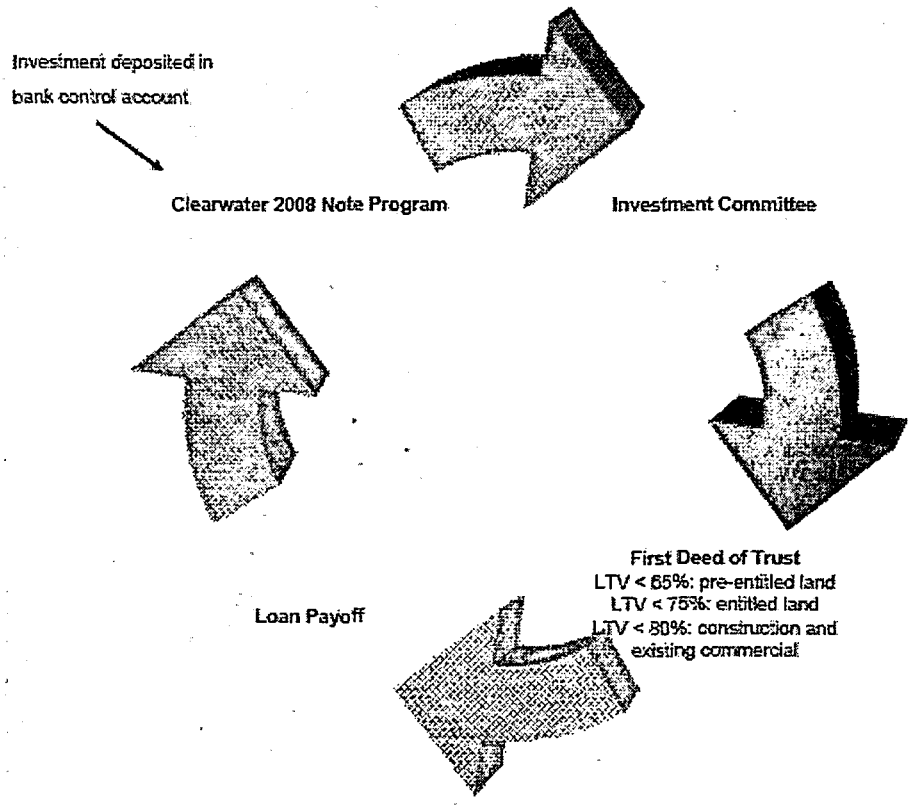
Documentation Required

The Investment Committee will require the following documentation at a minimum:

- ❖ Borrower Financial Statements
- ❖ Budgets or Proforma
- ❖ Projections
- ❖ Operating Statements
- ❖ Title & Survey
- ❖ Phase I, environmental questionnaire, or soils report (Investment Committee's discretion)
- ❖ Appraisal or Opinion of Value (Investment Committee's discretion)

Loan Process & Life Cycle

The following chart depicts the life cycle of loans made by the Company.



MANAGEMENT OF THE COMPANY

General

The Manager is Clearwater REI, LLC, an Idaho limited liability company. As discussed below, the key corporate officers of the Manager have extensive business experience, including real estate acquisition, development, construction, financing and management.

The principal executive offices of the Company and the Manager are located at 1300 E. State Street, Suite 103, Eagle, ID 83616. The Company's and Manager's telephone number at such address is (208) 639-4488.

Experience

Clearwater REI, LLC and its Affiliates have current and completed investment holdings in California, Idaho, Arizona and Nevada. Projects include raw land, entitlement, improvements, construction and sale of subdivisions, industrial, office, hotel, condo and master planned communities. The Manager and its Affiliates have completed projects having an aggregate value of $40,136,000 to date. The Manager and its Affiliates have demonstrated the ability to complete projects in a timely and efficient manner with strong returns being provided to investors from these projects. The Manager and its Affiliates have current projects in various stages of completion having an approximate aggregate value of $476,158,120. With 20 years of experience, the principals of the Company have a proven track record of providing strong risk adjusted returns thereby creating lasting value for their investors and partners alike. In conjunction with their priority of always keeping the investor first, their detailed approach in sourcing projects which stand alone in quality has ensured equity preservation and unlimited growth potential.

Principal Officers

RON MEYER, Chief Development Officer

Ron Meyer brings over 25 years of successful real estate and business experience including real estate investments, brokerage operations and mortgage lending. He has significant experience with respect to identifying

and negotiating real estate development opportunities. Mr. Meyer exhibits extensive knowledge of land acquisition and land entitlement, single-family home building, commercial land development and low-income housing development. He currently has projects in California, Nevada, Idaho and Arizona. Additionally, he has founded over 75 different business ventures with aggregate gross values in excess of $1 Billion.

CHRISTOPHER BENAK, Chief Development Officer

Chris Benak has 18 years experience in strategic business development, executive sales management, real estate development, property acquisition/disposition, and project management. Mr. Benak currently divides his time between (1) dealing with a project's acquisition, the initial management processes, including regulatory processes with city, county and state agencies and (2) ensuring project quality and delivery. He interfaces regularly with project managers, reviewing project timelines and cost analysis. Mr. Benak also secures strategic development partnerships, manages private investor funds and utilizes access to strategic market resources and networks to pursue competitive and cost-effective project deliverables.

DON STEEVES, National Sales Director & Broker-Dealer Relations

Don Steeves is directly responsible for interacting with legal, accounting and tax professionals in order to bring equity and debt offerings to the broker-dealer community. Mr. Steeves has been directly involved in debt offerings, tenant in common offerings and property acquisitions that exceeded $300 million. In these capacities, Mr. Steeves has had substantial experience in real estate and other investments. Mr. Steeves has spent time as a consultant in assisting in the acquisition and syndication in commercial property tenant-in-common owners and single buyers. He has also held several positions at various companies including Chief Financial Officer, Director of Marketing Operations, Director of Tax and Investor Relations, and Controller. Mr. Steeves is a Certified Public Accountant and a Financial Operations Principal with FINRA and holds Series 22, 28 and 63 licenses with FINRA.

BART COCHRAN, Vice President of Acquisitions & Operations

Bart Cochran maintains a very expansive book of nationwide lending relationships and he has extensive experience in the placement, processing, and closing of commercial financing in excess of $200 million in property acquisition and refinances. Much of this work was primarily done with secondary market lending sources, insurance companies, and portfolio lenders. Mr. Cochran has successfully negotiated large scale affiliate relationships which have allowed him to successfully place debt as a direct lender. This has provided Mr. Cochran with a significant competitive edge in the market. He also has experience in tenancy in common financial structuring, sales coordination, and one-off specialty transactions. Mr. Cochran is also a licensed real estate agent in the State of Idaho.

CHAD HANSEN, Vice President of Finance

Chad Hansen has a successful track record in the commercial real estate industry in placing and closing financing on various property types ranging from acquisitions to refinances. He currently maintains relationships with numerous conduit lenders, insurance companies, portfolio lenders, investment banks and private lenders that provide access to competitive terms. Mr. Hansen has been directly involved in tenant-in-common financial structuring and tenant-in-common permanent debt for multiple past offerings. Mr. Hansen has been involved in the placement and closing of over $200 million in commercial real estate financing with much of this directly related to the permanent debt secured on tenant-in-common offerings.

Investment Committee

The Investment Committee will include, but not be limited to the following principals:

- Ron Meyer, Chief Development Officer
- Chris Benak, Chief Development Officer
- Don Steeves, National Sales Director & Broker-Dealer Relations
- Bart Cochran, Vice President of Acquisitions & Operations
- Chad Hansen, Vice President of Finance.

The Investment Committee will, at its discretion, take into consideration the opinions and recommendations of the Company's employees for further insight if need be. The purpose of such decision is to ensure that all lending decisions are based on the collective knowledge and insight on such property or market.

Guaranty

RE Capital Investments, LLC will guarantee the repayment of the original principal amount of the Notes. See Exhibit C, Balance Sheet of RE Capital Investments, LLC as of July 31, 2008 and Exhibit D, Guaranty.

CLEARWATER REI, LLC

General

Clearwater REI, LLC acquires projects ranging from raw land to institutional grade commercial real estate across the United States. The company structures its offerings to afford accredited investors participation in investments proven to maximize returns while managing risk. The Company is committed to providing lasting value to its investor clients and seeks to create a partnership of trust with each investment instead of merely providing a simple investment solution. This is evidenced by the fact that the Company stands behind its offerings and intends to maintain a fractional interest in every investment offered thus sharing in the investment and demonstrating its absolute confidence in each offering.

Key Management

- RON MEYER, Chief Development Officer
- CHRIS BENAK, Chief Development Officer
- DON STEEVES, National Sales Director & Broker-Dealer Relations
- BART COCHRAN, Vice President of Acquisitions & Operations
- CHAD HANSEN, Vice President of Finance

See "Management of the Company – Principal Officers."

COMPENSATION OF THE COMPANY, THE MANAGER AND THEIR AFFILIATES

The following is a description of the compensation that the Company, the Manager and their Affiliates may receive in connection with this Offering. The compensation arrangements described below have been established by the Manager and are not the result of arm's-length negotiations. See "Conflicts of Interests." Unless otherwise indicated, all Offering and acquisition related amounts assume the Maximum Offering Amount is raised and will be reduced proportionately should a lesser amount be raised.

Form of Compensation	Description of Compensation and Entity Receiving	Estimated Amount of Compensation
Offering and Organization Stage:		
Sponsor Compensation:	The Manager or its Affiliates will receive a fee equal to 2.55% of the Gross Proceeds.	Approximately $510,000 for the Maximum Offering Amount ($1,020,000 if increased to $40,000,000).
Organization and Offering:	The Company will receive up to 0.40% of the Gross Proceeds.	Approximately $80,000 for the Maximum Offering Amount ($160,000 if increased to $40,000,000).

DESCRIPTION OF THE NOTES

The Notes are issued pursuant to and evidenced by the Note Register and will be held in "book-entry" on the Note Register by the Company. The offering of Notes by the Company will be limited to $20,000,000 in aggregate principal amount, subject to increase to $40,000,000 at the sole discretion of the Company. The Company intends to: (a) pay simple or compound interest at the annual rate of 9.0% which interest will accrue at the end of each month during the term of the Notes and will be distributed or reinvested depending on the elections of the Noteholders; and (b) by December 31, 2015 return the original principal amount plus all accrued but unpaid interest thereon to the Noteholders. **There is no assurance that these objectives will be achieved.**

Interest Reinvestment Program

Noteholders may choose one of two options for the interest earned on their Notes:

Interest Payment: Noteholders may elect to receive monthly interest payments in an amount equal to 9.0% simple interest on their principal investment. All distributions will paid in arrears on the fifteenth day of each month, beginning with the month following the month in which the Notes are issued.

Interest Reinvestment Program (IRP): By giving written notice to the Company of their desire to do so not later than November 30, Noteholders may elect to have their interest reinvested and compounded monthly beginning on the first day of the year immediately following the date on which such notice was received by the Company. Reinvested interest will be compounded at the annual rate of 9.0%. Interest that is reinvested will be added to and considered part of the principal amount of the Note at the end of each calendar month.

Liquidity; Callability

The Notes are issued with a minimum purchase of $50,000 and in additional denominations of $1,000; however, smaller purchases are available at the sole discretion of the Company. Notes will be issued and will begin accruing interest on the first day immediately following the day on which the investment proceeds therefore are received by the Company. Beginning December 31, 2011, the Company, at is sole discretion, may call all or any portion of the Notes, at any time, for 100% of the original principal amount of such Notes, plus accrued but unpaid interest, upon 90 days written notice to the Noteholders, without penalty. Beginning December 31, 2010 and once

annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company. See "Description of the Notes." Capitalized terms not otherwise defined herein have the meanings given to them in the Glossary.

Guaranty

The Notes will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC; however, they will not be secured by collateral.

Transfer and Exchange of Notes

Generally, the Notes will be non-transferable except in very limited circumstances. If a transfer is permitted by the Company, the transfer of Notes may be effected only by the registered owner thereof, at the Company's principal executive office in Eagle, Idaho. Substantial restrictions apply to the transfer of the Notes. The Notes have not been registered under the Securities Act, and therefore, cannot be sold or transferred unless they are subsequently registered under the Securities Act or an exemption from such registration is available. A Noteholder may, under certain circumstances, be permitted to transfer the Notes, but only to persons who meet certain suitability standards and the Company may require assurances that such standards are met before agreeing to any transfer of the Notes. Additionally, the Company may charge an administrative fee to effectuate any such transfer or exchange.

Death of Noteholder

Upon the death of a Noteholder, the personal representative of such Noteholder may call the Note of such Noteholder and will receive the principal amount of such note, plus all accrued but unpaid principal thereon by giving written notice to the Company not less than 90 days following the date of death of such Noteholder. Interest will be payable through the date of which the principal is received by the Noteholder's personal representative and all principal and interest will be paid by the Company not later than 30 days following receipt of such notice.

CAPITALIZATION

The following table sets forth as of December 31, 2008, the expected capitalization of the Company and capitalization as adjusted to give effect to the issuance and sale by the Company of the Maximum Offering Amount of the Notes offered hereby.

	As Adjusted[1] Maximum
Long-Term Debt:	
Notes	$20,000,000
Total funded long-term debt	$20,000,000
Members' Equity:	
100% Membership Interest:	$1,000
Total Members' equity	$1,000

[1] As adjusted to reflect the Offering of $20,000,000, which is subject to increase to $40,000,000 at the sole discretion of the Company.

PLAN OF DISTRIBUTION

The Offering

The Company is offering up to $20,000,000 (subject to increase to $40,000,000 at the sole discretion of the Company) aggregate principal amount of Notes due December 31, 2015, to prospective Noteholders who are Accredited Investors and who meet any additional requirements imposed by certain states or by the Company itself. The Notes are issued with a minimum purchase of $50,000 and in additional denominations of $1,000. However, a purchase for less than $50,000 may be accepted at the sole discretion of the Company. Persons desiring to purchase

Notes should follow the procedure described in "How to Subscribe." Certain Noteholders, including but not limited to, selling agents, if allowed by their broker-dealer, employees of the Company or Affiliates, and any other Noteholders at the sole discretion of the Company may buy Notes at a discount or net of selling commissions and expense reimbursements, reflecting, without limitation, the reduction in the broker-dealer commission payable by the Company on their purchase. The Company, at its sole discretion, may reject any subscription in whole or in part. Such rejection may be made for any reason. If the Minimum Offering Amount has not been reached and accepted by December 31, 2008 (which may be extended to June 30, 2009 in the Company's sole discretion), none of the Notes will be sold.

Notes will be offered and sold on a "best efforts" basis by broker-dealers who are members of FINRA. The members of the Selling Group will receive selling commissions of up to 7.0% of the Gross Proceeds. The amount of Selling Commissions may be reduced, however, if a lower commission rate is negotiated with a member of the Selling Group. The Managing Broker-Dealer will receive up to 2.3% of the Gross Proceeds as compensation and reimbursement for due diligence and marketing expenses up to 1.0% of which may be re-allowed to members of the Selling Group for marketing and due diligence expenses. The aggregate amount of Selling Commissions and Expense Reimbursements paid to members of the Selling Group will not exceed 9.3% of the Gross Proceeds. See "Use of Proceeds" Affiliates of the Company may receive Selling Commissions in connection with the sale of Notes. See "Conflicts of Interest." The Company, in its discretion, may accept purchases of Notes net of all or an agreed portion of the Selling Commissions from subscribers purchasing through a registered investment advisor, from subscribers for Notes who are affiliates of the Company or a member of the Selling Group.

The selling agreements to be entered into by the Company with the members of the Selling Group and RIA's contain provisions for indemnity from the Company with respect to liabilities, including certain civil liabilities under the Securities Act, which may arise from the use of this Memorandum in connection with the offering of the Notes. A successful claim by members of the Selling Group for indemnification could result in a reduction in the Company's assets. In the opinion of the Securities and Exchange Commission, indemnification for liabilities under the Securities Act is against public policy and therefore unenforceable.

Suitability Requirements for Noteholders

Purchase of the Notes is suitable only for persons of adequate financial means who have no need for liquidity with respect to this investment. There will not be any public market for the Notes and they should be considered illiquid.

Notes will be sold only to prospective Noteholders, or fiduciaries representing them, who represent in writing that they meet certain standards. See "Who May Invest." Prospective Noteholders residing in certain states may need to meet additional standards.

Prospective Noteholders should be aware that the Notes have not been registered under the Securities Act and therefore cannot be sold or transferred unless they are subsequently registered under the Securities Act or an exemption from such registration is available; accordingly, a Noteholder must bear the economic risk of the investment in the Notes for an indefinite time. Under certain very limited circumstances, a Noteholder may be permitted to transfer Notes, but then only to persons who meet certain suitability standards, and the Company will require assurances that such standards are met before agreeing to any transfer of the Notes.

Documents to be Completed by Noteholders

Each prospective Noteholder desiring to subscribe for the Notes must complete and sign the Subscription Agreement and Investor Instructions attached to this Memorandum (or separate copy thereof) and return them to the Company.

In the Subscription Agreement and Investor Instructions each prospective Noteholder will acknowledge, among other things that he or she: (1) is purchasing the Notes for investment only and not with any intention of reselling or distributing all or any portion thereof to others; (2) is able to bear the economic risk of investment in the Notes; and (3) has provided complete and accurate information to the Company concerning their status as an Accredited Investor and other relevant data. This Offering is intended to be a private offering exempt from the securities registration requirements of the Securities Act, by virtue of compliance with Regulation D promulgated under the Securities Act. Accordingly, the Notes offered hereby are not, and will not, be registered with the Securities and Exchange Commission or with any state securities commission.

FEDERAL INCOME TAX MATTERS

Circular 230 Notice: **Nothing contained in this Memorandum is intended or written by the Company or any of its advisors to be used, and it cannot be used, by any potential Noteholder or other person for the purpose of avoiding penalties that may be imposed under federal income tax law.** This Memorandum was written to support the promotion or marketing of the Notes and offered by the Company and other matters addressed in this Memorandum. Each potential Noteholder should seek advice concerning the tax aspects of and tax considerations involved in an investment in the Notes from an independent tax adviser.

General

The following is a general discussion of certain federal income tax consequences of the purchase, ownership and disposition of the Notes based upon the relevant provisions of the Internal Revenue Code of 1986, as amended (the "Code"), the regulations thereunder, existing judicial decisions and published rulings. Future legislative, judicial or administrative changes or interpretations, which may or may not be retroactive, could affect the federal income tax consequences to the Noteholders or The Company. The discussion below does not purport to deal with the federal income tax consequences applicable to all categories of investors, some of which may be subject to special rules. The discussion focuses primarily upon investors who will hold the Notes as "capital assets" (generally, Notes held for investment) within the meaning of the Code, you are advised to consult your own tax advisors with regard to the federal income tax consequences of acquiring, holding and disposing of the Notes, as well as state, local and other tax consequences resulting from an investment in the Notes.

If it were determined that the Notes should be treated for federal income tax purposes as an equity investment in the Company instead of as indebtedness, the changes in the tax consequences to Noteholders might be significant and adverse. If the Notes were treated as equity for tax purposes, Noteholders would be taxed as owners of the Company for tax purposes. The tax treatment of owners of a limited liability company is substantially different than the tax treatment of lenders to a limited liability company. If the Noteholders were treated as owners, their income might be significantly different in amount and character than the interest income on the Notes.

The following discussion is based on the assumption that the Notes will be treated in their entirety as indebtedness and not as an equity investment in the Company.

Interest paid or accrued on the Notes will be treated as ordinary income to the Noteholders. Interest paid to Noteholders will generally be taxable to them when received, but interest paid to Noteholders who report their income on the accrual method will be taxable to them when accrued, if earlier, regardless of when such interest is actually paid. The Company will report quarterly to the IRS and to the Noteholders of record interest paid or accrued on the Notes.

Market Discount

Noteholders who acquire Notes at a discount from the aggregate principal amount of the Notes generally will also be required to: (a) treat a portion of any gain realized on a sale, exchange, redemption or certain other dispositions (e.g., a gift) of the Notes as ordinary income to the extent of the accrued market discount and defer, until disposition of the Notes, all or a portion of the interest deductions attributable to any indebtedness incurred or continued to purchase or carry the Notes issued with market discount in the event such interest exceeds the interest on the Notes includable in the Noteholder's income or (b) elect to include such market discount in income as it accrues on all market discount instruments held by such Noteholder. It should be noted that market discount will be deemed to be zero if the amount allocable to each Note is less than one-quarter of one percent of the stated redemption price at maturity of such Notes times the number of complete years to its maturity remaining after the date of purchase.

Sale or Exchange of Notes

Upon a sale, exchange or redemption of a Note, the Noteholder will recognize gain or loss equal to the difference between the amount realized on such sale, exchange or redemption and his or her adjusted basis in the Notes. Such adjusted basis generally will equal the cost of the Notes to such Noteholder (increased by market discount if the election described above is made) included in his or her gross income with respect to such Notes and

reduced by any basis in the Notes previously allocated to payments on the Notes received by such Noteholder. Similarly, a Noteholder who receives a principal payment with respect to the Notes will recognize gain or loss equal to the difference between the amount of the payment and his or her adjusted basis in the Notes or portions thereof that are satisfied by such payment. Except as discussed above with respect to market discount, any such gain or loss will be capital gain or loss (provided the Notes are held as a capital asset) and will be long-term or short-term depending on whether the Notes have been held for more than one year. You should realize that the Notes are subject to restrictions on transferability. See "Risk Factors—Restrictions on Transfer."

Backup Withholding

A Noteholder may, under certain circumstances, be subject to "backup withholding" with respect to "reportable payments." This withholding generally applies if a Noteholder: (a) fails to furnish the Company with its taxpayer identification number ("TIN"); (b) furnishes the Company an incorrect TIN; (c) fails to report properly interest, dividends or other "reportable payments" as defined in the Code; or (d) under certain circumstances, fails to provide the Company with a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that the Noteholder is not subject to backup withholding. Backup withholding will not apply, however, with respect to certain payments made to Noteholders, including payments to certain exempt recipients (such as exempt organizations) and to certain foreign investors. Noteholders should consult their tax advisers as to their qualification for exemption from backup withholding and the procedure for obtaining the exemption.

State Income Tax Consequences

You should also consider the state income tax consequences of the acquisition, ownership, and disposition of the Notes. State income tax law may differ substantially from the corresponding federal law, and this discussion does not purport to describe any aspect of the income tax laws of any state. Therefore, you should consult your own tax advisors with respect to the various state tax consequences of an investment in the Notes.

INVESTMENTS BY QUALIFIED PLANS AND INDIVIDUAL RETIREMENT ACCOUNTS

In considering an investment in the Notes of any assets of a qualified plan, a fiduciary, taking into account the facts and circumstances of such qualified plan, should consider, among other things:

(1) whether the investment is in accordance with the documents and instruments governing such qualified plan;

(2) the definition of plan assets under ERISA ("Plan Assets");

(3) whether the investment satisfies the diversification requirements of Section 404(a)(1)(C) of ERISA;

(4) whether, under Section 404(a)(1)(B) of ERISA, the investment is prudent considering the nature of an investment in the Notes and the fact that there is not expected to be a market created in which the fiduciary can sell or otherwise dispose of the Notes;

(5) whether the Company, the Manager or any of their Affiliates is a fiduciary or a party in interest to the qualified plan; and

(6) whether an investment in Notes may cause the qualified plan to recognize UBTI.

With respect to item (6) above, the Company's management believes that the payment of interest to Noteholders pursuant to this Offering will not, standing alone, result in the recognition of UBTI by tax-exempt investors. The prudence of a particular investment must be determined by the responsible fiduciary (usually the trustee, plan administrator or investment manager) with respect to each qualified plan, taking into account all of the facts and circumstances of the investment.

ERISA provides that Notes may not be purchased by a qualified plan if the Company, the Manager or any of their Affiliates is a fiduciary or party in interest (as defined in Sections 3(21) and 3(14) of ERISA) to the plan unless such purchase is exempt from the prohibited transaction provisions of Section 406 of ERISA. Under ERISA, it is the responsibility of the fiduciary responsible for purchasing Notes not to engage in such transactions. Section 4975 of the Code has similar restrictions applicable to transactions between disqualified persons and qualified plans or

individual retirement accounts, which could result in the imposition of excise taxes on the Company, unless and until such a prohibited transaction is corrected.

In the case of an IRA, if the Company, the Manager or any of their Affiliates is a disqualified person with respect to the IRA, the purchase of Notes by the IRA could instead cause the entire value of the IRA to be taxable to the IRA sponsor.

Section 406 of ERISA and Code Section 4975 also prohibit qualified plans from engaging in certain transactions with specified parties involving Plan Assets. Code Section 4975 also prevents IRAs from engaging in such transactions. One of the transactions prohibited is the furnishing of services between a plan and a "party in interest" or a "disqualified person." Included in the definition of "party in interest" under Section 3(14) of ERISA and the definition of "disqualified person" in Code Section 4975(e)(2) are "persons providing services to the plan." If the Company, the Manager or certain entities and individuals related to them have previously provided services to a benefit plan investor, then the Company, or the Manager could be characterized as a "party in interest" under ERISA and/or a "disqualified person" under the Code with respect to such benefit plan investor. If such a relationship exists, it could be argued that the Affiliate of the Company, or the Manager is being compensated directly out of Plan Assets for the provision of services, i.e., establishment of the Offering and making it available as an investment to the qualified plan. If this were the case, absent a specific exemption applicable to the transaction, a prohibited transaction could be determined to have occurred between the qualified plan and the Affiliate of the Company, or the Manager.

Another type of transaction prohibited by ERISA and the Code is one in which fiduciaries of a qualified plan or the person who establishes an individual retirement account engage in self-dealing or in co-investment with the plan or account. Accordingly, Affiliates of the Company and the Manager are not permitted to purchase Notes with assets of any benefit plan investor if they: (a) have investment discretion with respect to such assets or (b) regularly give individualized investment advice which serves as the primary basis for the investment decisions made with respect to such assets. In addition, no fiduciary of a qualified plan or owner of an individual retirement account should purchase Notes both individually and with assets of the benefit plan investor.

With respect to an investing IRA, the tax-exempt status of the account could be lost if the investment constitutes a prohibited transaction under Code Section 408(e)(2) by reason of the Affiliate of the Company or the Manager engaging in the prohibited transaction with the IRA or the individual who established the IRA or his beneficiary. If the IRA were to lose its tax-exempt status, the entire value of the IRA would be considered to be distributed and taxable to the IRA sponsor.

REPORTS

The Company will furnish the following reports, statements, and tax information to each Noteholder:

Confirmation of Notes. Upon acceptance of the Subscription Agreement, each Noteholder will receive a confirmation of the amount of the denomination of his purchase. Although the Notes will be "book-entry" on the Note Register, Noteholders will receive a note evidencing the Company's indebtedness to the Noteholders.

Annual Report. Within 120 days after the end of each calendar year, the Company will send to each Noteholder of record during the previous year: (a) an audited balance sheet for the Company as of the end of such fiscal year and (b) an audited statement of the Company's earnings for such fiscal year, along with a year-end status report.

Tax Information. Within 60 days after the end of each fiscal year, the Company will send to each Noteholder such tax information as shall be necessary for the preparation of federal income tax returns and state income and other tax returns with regard to the applicable jurisdictions.

RATING

The Company will not request a rating from Standard and Poor's Corporation, Moody's Investor's Service, or any other or similar rating company. The Company believes that the benefits of a rating do not justify the costs associated with a rating for the Notes issued by a new company with no established operating history.

LITIGATION

There is no action, suit, or proceeding known to be pending or threatened restraining or enjoining the execution or delivery of the Notes or in any way contesting or affecting the validity of the Notes.

ADDITIONAL INFORMATION

The Company will answer inquiries from subscribers concerning the Notes, the Company and other matters relating to the offer and sale of Notes, and the Company will afford subscribers the opportunity to obtain any additional information to the extent the Company possesses such information or can acquire such information without unreasonable effort or expense that is necessary to verify the information in this Memorandum.

Subscribers are entitled to review copies of other material contracts relating to the Notes described in this Memorandum. In the Subscription Agreement, you will represent that you are completely satisfied with the results of your pre-investment due diligence activities.

GLOSSARY

The definitions of certain terms used in this Memorandum are set forth below:

"Accredited Investor" means, in addition to certain institutional investors, an investor who meets one of the following tests in which case such investor should qualify as an Accredited Investor:

(1) the investor is a natural person who had individual income in excess of **$200,000** in each of the two most recent years, or joint income with that person's spouse in excess of **$300,000** in each of these years, and has a reasonable expectation of reaching the same income level in the current year; or

(2) the investor is a natural person whose individual Net Worth, or joint Net Worth with that person's spouse, exceeds **$1,000,000** at the time of purchase of the Notes; or

(3) the investor is an organization described under Section 501(c)(3) of the Code, a corporation, Massachusetts or similar business trust or a partnership, not formed for the specific purpose of acquiring the Notes, with total assets in excess of **$5,000,000**; or

(4) the investor is an entity (including an Individual Retirement Account trust) in which each of the equity owners is an Accredited Investor as defined above in subparagraphs (1) and (2) above; or

(5) the investor is a trust with total assets in excess of **$5,000,000**, not formed for the specific purpose of acquiring the Notes, whose purchase is directed by a "sophisticated person" as defined in Rule 506(b)(2)(ii) of Regulation D under the Securities Act; or

(6) the investor is an employee benefit plan within the meaning of ERISA in which the investment decision is made by a plan fiduciary (as defined in Section 3(21) of ERISA) which is either a bank, savings and loan association, insurance company, or registered investment adviser; or the employee benefit plan has total assets in excess of **$5,000,000**; or it is a self-directed plan in which investment decisions are made solely by persons who are Accredited Investors.

"Affiliate(s)" means: (a) any person directly or indirectly controlling, controlled by or under common control with another person; (b) a person owning or controlling 10% or more of the outstanding voting securities of such other person; (c) any officer, director or partner of such other person; and (d) if such other person is an officer, director or partner, any company for which such person acts in any capacity. The term "person" shall include any natural person, corporation, partnership, trust, unincorporated association or other legal entity.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" means Clearwater 2008 Note Program, LLC, an Idaho limited liability company.

"Counsel" means Hirschler Fleischer, A Professional Corporation, located in Richmond, Virginia.

"DOL Regulations" means 29 C.F.R. Section 2510.3-101.

"ERISA" means the U.S. federal Employment Rights and Income Security Act, U.S.C. Title 29, Section 18.

"Escrow Agent" means a bank or other financial institutions that satisfies the requirements of Rule 15c2-4 promulgated under the Exchange Act, as the same is interpreted by FINRA from time to time.

"Event of Default" refers to the occurrence of any of the following: (a) failure to pay the principal on the Notes when due at maturity, or upon any earlier due date, or upon mandatory redemption at the option of Noteholder, (b) failure to pay any interest on the Notes for ten days after notice of such default to the Company; (c) failure to perform any other covenant for ten days after receipt of written notice specifying the default and requiring the Company to remedy such default; or (c) events of insolvency, receivership, conservatorship or reorganization of the Company.

"Exhibits" means the exhibits attached to this Memorandum and incorporated herein by this reference.

"FINRA" means the Financial Industry Regulatory Authority, Inc.

"Gross Proceeds" means the sum of all money raised by the Company through the sale of Notes pursuant to this Memorandum.

"IRA" means an Individual Retirement Account.

"IRS" means the Internal Revenue Service.

"Manager" refers to Clearwater REI, LLC. The Manager is sole owner and the initial manager of the Company. The term shall also refer to any successor or additional Manager, who is properly designated as a Manager.

"Managing Broker-Dealer" means Select Capital Corporation.

"Maximum Offering Amount" means $20,000,000 in aggregate principal amount of Notes, subject to increase to $40,000,000 at the sole discretion of the Company.

"Memorandum" means this Confidential Private Placement Memorandum and the Exhibits hereto dated August 29, 2008, as amended or supplemented, pursuant to which the Company is offering the Notes.

"Minimum Offering Amount" means $1,000,000.

"Noteholders" means purchasers of Notes.

"Notes" means the $20,000,000 aggregate principal amount of 9.0% notes due December 31, 2015, subject to increase to $40,000,000 at the sole discretion of the Company, which will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC; however, the Notes will not be secured by collateral.

"Note Register" means the records and documentation retained to track the ownership interest of the Notes.

"Offering" means the offering of Notes by the Company pursuant to the terms and conditions described in the Memorandum.

"Registrar" means the Company, which is responsible for keeping track of the Noteholders and maintaining the Note Register.

"RIA" refers to Registered Investment Advisers.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulation promulgated thereunder.

"Selling Group" means broker-dealers selected by the Company who are members of the FINRA and who offer and sell Notes on a "best efforts" basis.

"Treasury Regulations" means the United States Treasury Regulations promulgated pursuant to the Code.

"UBTI" means unrelated business taxable income.

INSTRUCTIONS TO INVESTORS

Clearwater 2008 Note Program, LLC
9.0% Notes Due December 31, 2015

Please read carefully the Private Placement Memorandum dated August 18, 2008 for the sale of $20,000,000 (subject to increase to $40,000,000) in aggregate principal amount of 9.0% Notes due December 31, 2015 ("Notes") issued by Clearwater 2008 Note Program, LLC, an Idaho limited liability company ("Company"), as supplemented from time to time, and all Exhibits thereto (collectively, the "Memorandum"), before deciding to subscribe. Capitalized terms not defined herein have the meanings set forth in the Memorandum.

Each prospective investor in Notes should examine the suitability of this type of investment in the context of his/her own needs, investment objectives and financial capabilities and should make his/her own independent investigation and decision as to suitability and as to the risk and potential gain involved. Also, each prospective investor in Notes is encouraged to consult with his/her attorney, accountant, financial consultant or other business or tax advisor regarding the risks and merits of the proposed investment.

This Offering is limited to investors who certify that they meet all of the qualifications set forth in the Memorandum for the purchase of Notes.

If you meet these qualifications and desire to purchase Notes, then please complete, execute and deliver the attached Subscription Agreement along with your check, payable to "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC" in the amount of the Subscription Payment.

Subscription Agreements and all attachments should be mailed or delivered to the Company at:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Don Steeves

All funds should be mailed, delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Don Steeves

Wire Instructions:
Account Number: 1001001602349
Routing/ABA Number: 324170140
Account Name: Clearwater 2008 Note Program, LLC

Upon receipt of this signed Subscription Agreement, verification of your investment qualifications and acceptance of your subscription by the Company (the Company reserves the right, in its sole discretion, to accept or reject a subscription for any or no reason whatsoever), the Company will notify you of receipt and acceptance of your subscription.

<u>Important Note</u>: **The person or entity actually making the decision to invest in Notes should complete and execute this Subscription Agreement. For example, retirement plans often hold certain investments in trust for their beneficiaries, but the beneficiaries may maintain investment control and discretion. In such a situation, the beneficiary with investment control must complete and execute this Subscription Agreement (this also applies to trusts, custodial accounts and similar arrangements).**

SUBSCRIPTION AGREEMENT

Clearwater 2008 Note Program, LLC
9.0% Notes Due December 31, 2015

This is the offer and agreement ("Subscription Agreement") of the undersigned to purchase $_____ ($50,000 minimum investment) in principal amount of 9.0% Notes due December 31, 2015 ("Notes") to be issued by Clearwater 2008 Note Program, LLC, an Idaho limited liability company (the "Company") ("Subscription Price"), subject to the terms, conditions, acknowledgments, representations and warranties stated herein and in the Confidential Private Placement Memorandum relating to the offer of up to $20,000,000 (subject to increase to $40,000,000) in aggregate principal amount in Notes dated August 29, 2008, as supplemented from time to time (the "Memorandum"). I am including with this Subscription Agreement a check payable to the order of "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC" in the amount of $_____, representing the Subscription Price for the Notes I am purchasing. All terms utilized herein shall have the same meaning as set forth in the Memorandum.

In order to induce the Company to accept this Subscription Agreement for Notes and as further consideration for such acceptance, I hereby make the following acknowledgments, representations and warranties with the full knowledge that the Company will expressly rely thereon in making a decision to accept or reject this Subscription Agreement:

1. I hereby adopt, confirm and agree to all of the covenants, representations and warranties set out in this Subscription Agreement.
2. My primary state of residence is: _____
3. My date of birth is: _____.
4. If I am a natural person, I hereby represent and warrant that (check as appropriate):
   (a) _____ I, together with my spouse, have a net worth, inclusive of home, home furnishings and personal automobiles, in excess of $1,000,000; or
   (b) _____ I have individual income in excess of $200,000, or joint income with my spouse, in excess of $300,000, in each of the two most recent years, and I reasonably expect individual or joint income in excess of that amount in the current year.
5. If other than a natural person, such entity represents and warrants that (check as appropriate):
   _____ it is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.
6. If other than a natural person, is such entity a benefit plan qualified under Code Section 401(a), a benefit plan subject to ERISA, an individual retirement account or arrangement under Code Section 408 or any other company sponsored employee benefit plan or program?
   _____ Yes. _____ No.
7. Neither I nor any subsidiary, affiliate, owner, shareholder, partner, member, indemnitor, guarantor or related person or entity:
   (a) is a Sanctioned Person (as defined below);
   (b) has more than 15% of its assets in Sanctioned Countries (as defined below); or
   (c) derives more than 15% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries.

   For purposes of the foregoing, a "Sanctioned Person" shall mean (a) a person named on the list of "specially designated nationals" or "blocked persons" maintained by the U.S. Office of Foreign Assets Control ("*OFAC*") at *http://www.treas.gov/offices/eotffc/ofac/sdn/index.html*, or as otherwise published from time to time, or (b) (1) an agency of the government of a Sanctioned Country, (2) an organization controlled by a Sanctioned Country, or (3) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. A "Sanctioned Country" shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available at *http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html*, or as otherwise published from time to time.
8. Under penalties of perjury, I certify (a) that the number shown on this form is my correct taxpayer identification number and (b) that I am not subject to backup withholding, either because I have not been notified that I am subject to backup withholding as a result of a failure to report all

interest or dividends or the Internal Revenue Service has notified me that I am no longer subject to backup withholding. **(Please strike out the language certifying that you are not subject to backup withholding due to notified payee under-reporting if you have been notified that you are subject to backup withholding due to notified payee under-reporting, and you have not received a notice from the Internal Revenue Service advising you that backup withholding has terminated.)**

9. I further represent and warrant that such investment is not disproportionate to my income or available liquid funds and that I further have the capacity to protect my interests in connection with the purchase of the Notes.

10. I (we) wish to own my (our) Notes as follows (check one):

_____ (a) Separate or individual property. (In community property states, if the purchaser is married, his (her) spouse must submit written consent if community funds will be used to purchase the Notes.)

_____ (b) Husband and Wife as community property. (Community property states only. Husband and Wife should both sign all required documents unless advised by their attorney that one signature is sufficient.)

_____ (c) Joint Tenants with right of survivorship. (Both parties must sign all required documents unless advised by their attorneys that one signature is sufficient.)

_____ (d) Tenants in Common. (Both parties must sign all required documents.)

_____ (e) Trust. (Attach copy of trust instrument and include name of trust, name of trustee and date trust was formed.)

_____ (f) Partnership or Limited Liability Company. (Attach copy of articles or certificate, if any, and partnership agreement or operating agreement and include evidence of authority for person who executes required documents.)

_____ (g) Husband and Wife with right of survivorship. (Husband and wife should sign all documents unless other advised by their attorney.)

_____ (h) IRA or Qualified Plan:

_____

_____ (i) Other (indicate):

_____

_____

11. If the owner of Notes is an entity (trust, LLC, Partnership, etc.) my relationship to the owning entity is _____ (trustee, owner, partner, etc.)

Subscriber's Signature: X_____ Date: _____ ___, 200_

Subscriber's Signature: X_____ Date: _____ ___, 200_

1. I understand that in the event this Subscription Agreement is not accepted or, if accepted, the Offering is subsequently terminated or cancelled then the funds transmitted herewith shall be returned to the undersigned and this Subscription Agreement shall be terminated and of no further effect. RE Capital, LLC has agreed to guarantee the repayment of principal under the Notes. By executing this Subscription Agreement, each prospective investor of Notes approves the foregoing, acknowledges the risks described in the section of the Memorandum entitled "Risk Factors," and waives those provisions of the Securities Exchange Act of 1934, as amended, generally governing funds held in escrow prior to closing an offering.

2. I acknowledge that I have received, read and fully understand the Memorandum. I acknowledge that I am basing my decision to invest in Notes on the Memorandum and I have relied only on the information contained in said materials and have not relied upon any representations made by any other person. I recognize that an investment in Notes involves substantial risk and I am fully cognizant of and understand all of the risk factors related to the purchase of Notes, including, but not limited to, those risks set forth in the sections of the Memorandum entitled "Risk Factors."

3. My overall commitment to investments that are not readily marketable is not disproportionate to my individual net worth, and my investment in Notes will not cause such overall commitment to become excessive. I have adequate means of providing for my financial requirements, both current and anticipated, and have no need for liquidity in this investment. I can bear and am willing to accept the economic risk of losing my entire investment in Notes.

4. I acknowledge that the sale of Notes has not been accompanied by the publication of any advertisement, any general solicitation or as the direct result of an investment seminar sponsored by the Company or any of its Affiliates.

5. All information that I have provided to the Company herein concerning my suitability to invest in Notes is complete, accurate and correct as of the date of my signature on the last page of this Subscription Agreement. I hereby agree to notify the Company immediately of any material change in any such information occurring prior to the acceptance of this Subscription Agreement, including any information about changes concerning my net worth and financial position.

6. I have had the opportunity to ask questions of, and receive answers from, the Company and the Manager concerning the Company, the creation or operation of the Company or terms and conditions of the offering of Notes, and to obtain any additional information deemed necessary to verify the accuracy of the information contained in the Memorandum. I have been provided with all materials and information requested by either me or others representing me, including any information requested to verify any information furnished to me.

7. I am purchasing Notes for my own account and for investment purposes only and have no present intention, understanding or arrangement for the distribution, transfer, assignment, resale or subdivision of Notes. I understand that, due to the restrictions referred to in Paragraph 8 below, and the lack of any market existing or to exist for Notes, my investment in the Company will be highly illiquid and may have to be held indefinitely.

8. I am fully aware that Notes subscribed for hereunder have not been registered with the Securities and Exchange Commission in reliance on an exemption specified in Regulation D under the Securities Act of 1933, as amended, which reliance is based in part upon my representations set forth herein. I understand that Notes subscribed for herein have not been registered under applicable state securities laws and are being offered and sold pursuant to the exemptions specified in said laws, and unless they are registered, they may not be re-offered for sale or resold except in a transaction or as a security exempt under those laws. I further understand that the specific approval of such resales by the state securities administrator may be required in some states. **Notes have not been approved or disapproved by the United States Securities and Exchange Commission or other regulatory authority, nor have any of the foregoing authorities passed upon or endorsed the merits of this Offering or the accuracy or adequacy of the Memorandum. Any representation to the contrary is unlawful.**

9. I acknowledge that Home Federal Bank is acting solely as escrow holder in connection with the Offering of Notes, and makes no recommendations with respect thereto. I understand that Home Federal Bank has made no investigation regarding the Offering, Notes, the Company, the Manager, their Affiliates or their officers and directors, or any other person or entity involved in the Offering.

10. This Subscription Agreement shall be construed in accordance with and governed by the laws of the State of Idaho without regard to its choice of law provisions.

11. I hereby covenant and agree that any dispute, controversy or other claim arising under, out of or relating to this Agreement or any of the transactions contemplated hereby, or any amendment thereof, or the breach or interpretation hereof or thereof, shall be determined and settled in binding arbitration in Boise, Idaho, in accordance with applicable Idaho law, and with the rules and procedures of The American Arbitration Association. The prevailing party shall be entitled to an award of its reasonable costs and expenses, including, but not limited to, attorneys' fees, in addition to any other available remedies. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives, and judgment may be entered thereon in any court of competent jurisdiction. **BY EXECUTING THIS AGREEMENT, YOU ARE AGREEING TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE SUCH DISPUTES LITIGATED IN A COURT OR JURY TRIAL, AND YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE. BY EXECUTING THIS AGREEMENT, YOU HEREBY CONFIRM THAT YOUR AGREEMENTS TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

12. **I hereby agree to indemnify, defend and hold harmless the Company, the Manager, their Affiliates and all of their members, managers, shareholders, officers, employees, affiliates and advisors, from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that they may incur by reason of my failure to fulfill all of the terms and conditions of this Subscription Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished to any of the foregoing in connection with this transaction. This indemnification includes, but is not limited to, any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) incurred by the Company, the Manager, their Affiliates and any of their members, managers, shareholders, directors, officers, employees, affiliates or advisors, defending against any alleged violation of federal or state securities laws which is based upon or related to any untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished in connection with this transaction.**

13. I hereby acknowledge and agree that : (a) I may not transfer or assign this Subscription Agreement, or any interest herein, and any purported transfer shall be void; (b) except as specifically described herein, I am not entitled to cancel, terminate or revoke this Subscription Agreement and that this Subscription Agreement will be binding on my heirs, successors and personal representatives; provided, however, that if the Company rejects this Subscription Agreement, this Subscription Agreement shall be automatically canceled, terminated and revoked; (c) this Subscription Agreement and the Memorandum, together with all attachments and exhibits thereto, constitute the entire agreement among the parties hereto with respect to the sale of Notes and may be amended, modified or terminated only by a writing executed by all parties (except as provided herein with respect to rejection of this Subscription Agreement by the Company); (d) within two days after receipt of a written request from the Company, the undersigned agrees to provide such information and to execute and deliver such documents as may be

necessary to comply with any and all laws and regulations to which the Company is subject; and (e) the representations and warranties of the undersigned set forth herein shall survive the sale of Notes pursuant to this Subscription Agreement.

14. I am not making this investment in any manner as a representative of a charitable remainder unitrust or a charitable remainder trust.

Initial Here_____ Initial Here_____

[SIGNATURE PAGE FOLLOWS]

(SPECIAL INSTRUCTIONS: In all cases, the person/entity making the investment decision to purchase Notes must complete and sign the Subscription Agreement. For example, if the form of ownership designated above is a retirement plan for which investments are directed or made by a third party trustee, then that third party trustee must complete this Subscription Agreement rather than the beneficiaries under the retirement plan. Investors must list their principal place of residence rather than their office or other address on the signature page so that the Company can confirm compliance with appropriate securities laws. If you wish correspondence sent to some address other than your principal residence, please provide a mailing address in the blank provided below. Additionally, in an attempt to expedite the delivery of material information, the Company asks (but does not require) that you list a secondary contact source that may be able to reach you, if you are unavailable through any other reasonable means listed below.)

IN WITNESS WHEREOF, I (we) has executed this Subscription Agreement this ____ day of _____, 200__.

A. REGISTRATION INFORMATION or CUSTODIAN INFORMATION (if applicable)
Send ALL paperwork directly to the custodian

Please print the exact name (registration) investor desires on account:

_____

_____

Mailing address:_____

_____

E-mail address:_____

B. INVESTOR INFORMATION

Please send all investor correspondence to the following:

Name:_____

Address:_____

Investor Phone: Business (___)_____ Home: (___)_____

Investor Fax: Business (___)_____ Home: (___)_____

Primary State of Residence:_____

Social Security or Federal Tax ID Number:_____

C. SECONDARY CONTACT INFORMATION (OPTIONAL)

If the Company is unable to contact the Subscriber directly through any reasonable means provided by the Subscriber hereby, please contact the following individual who will be instructed by Subscriber to inform him/her that Subscriber should contact the Company as expeditiously as possible:

Secondary Contact Name:_____

Secondary Contact Address:_____

Secondary Contact Phone: Business (___)_____ Home: (___)_____

Secondary Contact Fax: Business (___)_____ Home: (___)_____

D. ELECTION TO PARTICIPATE IN INTEREST REINVESTMENT PROGRAM

If you wish to participate in the Interest Reinvestment Program, please initial here: _____

If you wish to receive monthly distributions of interest, please initial here: _____

You will have the opportunity twice annually (January 15th and July 15th) to change your election by giving written notice thereof to the Company not less than 30 days prior to the date on which the election may be changed.

D. SIGNATURES

THE UNDERSIGNED HAS THE AUTHORITY TO ENTER INTO THIS SUBSCRIPTION AGREEMENT ON BEHALF OF THE PERSON(S) OR ENTITY REGISTERED IN A. ABOVE.

Executed this ____ day of _____, 200_, at _____

X_____
Signature (Investor, or authorized signatory)

X_____
Signature (Investor, or authorized signatory)

E. SUBMIT SUBSCRIPTION

Mail the executed Subscription Agreement to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Don Steeves

The check (make payable to "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC") or funds should be wired, mailed or delivered to:

All funds should be delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Don Steeves

Wire Instructions:

Account Number: 1001001602349
Routing/ABA Number: 324170140
Account Name: Clearwater 2008 Note Program, LLC

Subscription Accepted:

Clearwater 2008 Note Program, LLC

By: Clearwater REI, LLC
an Idaho limited liability company
Its: Manager

By: _____ Date: _____
Name:
Its:

BROKER/DEALER REPRESENTATIONS AND WARRANTIES

Purchaser suitability requirements have been established by "Clearwater 2008 Note Program, LLC" (the "Project") and fully disclosed in its Private Placement Memorandum dated August 29, 2008 (the "Memorandum") under "Who May Invest." Before recommending purchase of membership interests in the Project being offered pursuant to the Memorandum (the "Interests"), we have reasonable grounds to believe, on the basis of information supplied by the subscriber concerning his, her or its investment objectives, other investments, financial situation and needs, and other pertinent information that: (i) the subscriber is an accredited investor as defined in Section 501(a) of Regulation D and meets the investor suitability requirements set forth in the Memorandum; (ii) the subscriber has a net worth and income sufficient to sustain the risks inherent in the Interests, including loss of investment and lack of liquidity; and (iii) the Interests are otherwise a suitable investment for the subscriber. We will maintain in our files documents disclosing the basis upon which the suitability of this subscriber was determined.

We verify that the above subscription either does not involve a discretionary account or, if so, that the subscriber's prior written approval was obtained relating to the liquidity and marketability of the Interests during the term of the purchase.

Broker/Dealer Firm Name_____

Registered Representative Name _____

Registered Representative's BRANCH ADDRESS_____

_____

Representative Phone Number_____
Representative Facsimile Number_____
Representative Email Address:_____

Broker/Dealer Firm BRANCH Phone Number:_____
Broker/Dealer Firm BRANCH Facsimile Number:_____

The Registered Representative Firm is licensed in the state in which the investor resides: Yes ____/No ____

_____
Registered Representative Signature

_____
Broker Dealer Authorized Principal

_____
Print Name

Balance Sheet of Clearwater 2008 Note Program, LLC
as of
December 31, 2008

Clearwater 2008 Note Program, LLC
Balance Sheet
as of 8/15/2008

ASSETS

CASH	$1,000

LIABILITIES AND SHAREHOLDER'S EQUITY

SHAREHOLDER'S EQUITY

Common stock - $1 par value; 100 shares authorized; 100 shares issued and outstanding	$100
Additional Paid-in Capital	$900
	$1,000

Balance Sheet of RE Capital Investments, LLC
as of
July 31, 2008

RE Capital Investments, LLC
Balance Sheet
As of July 31, 2008

	Jul 31, 08	
ASSETS		
Current Assets		
Checking/Savings		
Bank of America Checking - 357		3,144.28
Cash Reserve		250,000.00
US Bank		104,029.29
Total Checking/Savings		357,173.57
Total Current Assets		357,173.57
Fixed Assets		
Long Term Assets		
Investments - Partnerships	25,500,000.00	
Land Investments (net of 3rd pa	2,000,000.00	
Total Long Term Assets		27,500,000.00
Total Fixed Assets		27,500,000.00
Other Assets		
Investment		
CCS Trop-215, LLC	1,600,000.00	
Horseshoe Bend 400 (Program 1)	6,400,000.00	
ICP - Serene Meadows (20%)	1,600,000.00	
Idaho Partners (Baymont)	105,000.00	
New Meadows	6,400,000.00	
Sanger II	2,640,000.00	
Silver Mountain LLC (30%)	480,000.00	
Tres Rios Equity Partne (64.4%)	2,640,000.00	
WhiteCloud / New Meadow (62%)	1,984,000.00	
Total Investment		23,849,000.00
Note Receivables		
Clearwater - Bunker Hill	436,831.04	
Clearwater - MAC	73,500.00	
Clearwater Lodging		
Additional Capital Interest	25,000.00	
Initial Capital Interest	400,000.00	
Clearwater Lodging - Other	1,540,000.00	
Total Clearwater Lodging	1,965,000.00	
Clearwater REI LLC	458,763.00	
Cude-Barnett	80,000.00	
Heritage Lands LLC -Future Inte	342,357.96	
Horseshoe Bend - 3200 Acres	465,209.16	
Idaho Capital Partners LLC	250,000.00	
Sandpoint Condos	56,000.00	
Silver Mountain LLC	300,000.00	
Tres Rios Equity Partners	516,334.00	
Trop-215 Developer LLC	485,171.17	
Total Note Receivables		5,429,166.33
Total Other Assets		29,278,166.33
TOTAL ASSETS		**57,135,339.90**

RE Capital Investments, LLC
Balance Sheet
As of July 31, 2008

	Jul 31, 08	
LIABILITIES & EQUITY		
Liabilities		
Long Term Liabilities		
Notes Payable		
DH	300,000.00	
Diamond B Asset Management	568,650.19	
Heritage Lands LLC	2,375,000.00	
Interest Payable	46,763.00	
Terron Investments Inc.	569,000.00	
TH	300,000.00	
Total Notes Payable		4,159,413.19
Total Long Term Liabilities		4,159,413.19
Total Liabilities		4,159,413.19
Equity		
Land Equity		12,840,000.00
Partnership Equity		40,454,000.00
Retained Earnings		-314,176.01
Net Income		-3,897.28
Total Equity		52,975,926.71
TOTAL LIABILITIES & EQUITY		**57,135,339.90**

EXHIBIT D

Guaranty

In order to induce each prospective purchaser (each a "Noteholder" and collectively the "Noteholders") of 9.0% Notes due December 31, 2015 (each a "Note" and collectively the "Notes") issued by Clearwater 2008 Note Program, LLC (the "Company") to purchase the Notes, the Guarantor hereby unconditionally guarantees the payment of the original principal amount of the Notes as provided therein. This Guaranty shall remain in full force throughout the term of the Notes.

Guarantor hereby waives notice of acceptance of this Guaranty and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices to them of default by the Company under the Notes.

The Guarantor shall operate its business in a manner that, in light of its business judgment, maximizes its ability to perform its obligations under this Guaranty. The Guarantor's net worth will at all times during the term of the Guaranty be maintained at $54,000,000 subject to increase in pro rata up to $78,000,000 if the Company increases the offering amount of Notes.

Guarantor further agrees to the extent permitted by law, to pay any costs or expenses, including the reasonable fees of an attorney, incurred by the Noteholders in enforcing this Guaranty.

Guarantor acknowledges that the Noteholders may, by simple majority vote or consent, appoint one of them or a third-party attorney or agent, to prosecute the Noteholders' rights hereunder and such party shall be entitled to bring any suit, action or proceeding against the undersigned for the enforcement of any provision of this Guaranty on behalf of all Noteholders and it shall not be necessary in any such suit, action or proceeding to make each Noteholder a party thereto.

This Guaranty is not assignable, and shall be binding upon Guarantor, its legal representatives, permitted successors and assigns, and shall inure to the benefit of each Noteholder and its successors and assigns on a pro rata basis, calculated upon each Noteholder's share of the Notes. This Guaranty shall be governed by and construed and enforced in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed as follows:

RE Capital Investments, LLC

By: _____
Name: Diamond B Asset Management
Title: Managing Member
Date: July 31, 2008

No dealer, salesman or any other person has been authorized to give any information or to make any representations other than the information and representations contained in this Memorandum in connection with the offer made hereby, and, if given or made, such information and representations must not be relied upon as having been authorized by the Company. This Memorandum does not constitute an offer to sell, or a solicitation of an offer to buy, any of the Notes offered hereby to any person in any jurisdiction in which such offer or solicitation would be unlawful. Neither the delivery of this Memorandum nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Company since any of the dates as of which information is furnished herein or since the date hereof.

TABLE OF CONTENTS

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E State St. Ste 103 | Eagle, Idaho 83616 | 866.217.4906

CLEARWATER 2008 NOTE PROGRAM, LLC

$20,000,000
Maximum Offering Amount
(subject to increase to $40,000,000)

$1,000,000
Minimum Offering Amount

9.0% Notes Due December 31, 2015

$50,000
Minimum Investment Amount

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

August 29, 2008

SECOND SUPPLEMENT TO

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

CLEARWATER 2008 NOTE PROGRAM, LLC
$20,000,000 9.0% Notes
(Subject to increase to $40,000,000)

Minimum Investment: $50,000
Minimum Offering Amount: $1,000,000
Maximum Offering Amount: $20,000,000 (Subject to increase to $40,000,000)

Dated: June 30, 2009

This Second Supplement (the "Second Supplement") is designed to update, through June 30, 2009, the information previously provided in the Confidential Private Placement Memorandum dated August 29, 2008 (the "Memorandum"), which described the Offering by Clearwater 2008 Note Program, LLC (the "Company") of up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015, subject to increase to $40,000,000, and the First Supplement to the Memorandum dated October 3, 2008 (the "First Supplement") (as so supplemented, with all Exhibits to the Memorandum and the First Supplement, the "Offering Memorandum"). Capitalized terms used herein without definition shall have the meaning ascribed to them in the Offering Memorandum.

This Second Supplement is being furnished for your information on a confidential basis so that you may consider an investment in the Notes described in the Offering Memorandum and herein and should be read together with the Offering Memorandum. This Second Supplement is not to be reproduced or used for any other purpose. No person has been authorized to make any statement concerning the Offering other than as set forth in the Offering Memorandum and herein, and any such statement, if made, should not be relied upon. The Notes will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), or any other securities laws. Notes will be offered for investment purposes only pursuant to exemptions from the registration provisions provided under Regulation D of the Securities Act. There will be no public market for the Notes. There are significant risks associated with the Offering. See the Section entitled "Risk Factors" in the Offering Memorandum, as supplemented by this Second Supplement.

The Offering Memorandum, as supplemented by this Second Supplement, is not an offer to sell, or a solicitation of an offer to purchase Notes, and no Notes shall be offered or sold to any person in any jurisdiction in which such offer, solicitation, purchase or sale would be unlawful under the securities laws of such jurisdiction. The Offering Memorandum, as supplemented by this Second Supplement, has not been filed with the United States Securities and Exchange Commission ("SEC"), any securities administrator under state securities laws or any other governmental or self-regulatory authority. None of the SEC, any state securities administrators or governmental or self-regulatory authorities have passed on the merits of the Offering or the adequacy of the Offering Memorandum as supplemented by this Second Supplement. Any representation to the contrary is unlawful.

This Second Supplement describes updated information and should be read in its entirety by each investor.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

OFFERING MEMORANDUM

The following information described in the Offering Memorandum is hereby modified and supplemented as follows:

(a) The Balance Sheet of RE Capital Investments, LLC as of July 31, 2008 attached to the Memorandum as Exhibit C has been updated through December 31, 2008. The Balance Sheet of RE Capital Investments, LLC as of December 31, 2008 is attached to this Second Supplement as Exhibit A.

(b) As of the date of this Second Supplement, the Company has made three loans using proceeds of the Offering. Certain of the terms of those loans are as follows:

Property:	Florence Hospital	Legends 19	North Seattle Condos
Location:	Florence, AZ	Raymore, MO	Kenmore, WA
Loan Amount:	$6,160,000	$1,562,000	$3,745,740
Loan Date:	February 6, 2009	March 5, 2009	June 29, 2009
Appraised Value:	$10,995,000 (As Is)	$2,296,000	$8,000,000
Loan to Value (LTV)	56.03%	65.19%	46.82%
Interest Rate:	14%	14%	14%
Origination Fee:	4%	4%	4%
Term:	12 months	4 months	6 months

(c) The relationship of the Company, the Manager and RE Capital Investments, LLC to each other, and their respective owners, is as follows:

- RE Capital Investments, LLC owns 55.84% of Clearwater
  - Ronald D. Meyer owns 100% of Terron Investments, Inc., which owns 50% of RE Capital Investments, LLC
  - Christopher J. Benak owns 100% of Diamond B Asset Management, Inc., which owns the other 50% of RE Capital Investments, LLC
- Barton Cole Cochran owns 100% of Leap, Inc., which owns 19.58% of Clearwater
- Chad James Hansen owns 100% of Green Jacket Investments, Inc., which owns 19.58% of Clearwater
- A former employee of Clearwater owns the remaining 5% of Clearwater

(d) On September 4, 2008, an investor in several real estate development projects, including a project located in California and managed by Ronald Meyer, filed a complaint and statement of claim in arbitration in the Superior Court of the State of California against several individual and corporate defendants, including Mr. Meyer. The allegations in the complaint include claims of state law corporate securities fraud, breach of fiduciary duty, conversion, intentional misrepresentation, negligent misrepresentation and unfair business practices, among other claims, in connection with Mr. Meyer's involvement in, and alleged representations with respect to, certain real estate projects, as well as the activities of other defendants with respect to projects unrelated to Mr. Meyer. The claimant is seeking money damages, in addition to other remedies. Mr. Meyer and the other named defendants believe the lawsuit is without any merit and fully deny and are vigorously defending the claimant's allegations. Mr. Meyer believes that he will be successful in defending the lawsuit. The court has not made any ruling on the merits of the claimant's complaint.

(e) Bart Cochran, who was formerly the Company's Vice President of Acquisitions & Operations, is now the Company's President. Chad Hansen, who was formerly the Company's Vice President of Finance, is now the Company's Chief Financial Officer.

(f) The Offering Termination Date is hereby extended to December 31, 2009. The Manager reserves the right to further extend the Offering for an additional 12 months to December 31, 2010 in its sole discretion.

The information in this Second Supplement supersedes any information to the contrary provided in the Offering Memorandum.

SUPPLEMENTAL INFORMATION - The Private Placement Memorandum for the Offering of Notes consists of this sticker, the Memorandum dated August 29, 2008, the First Supplement to the Memorandum dated October 3, 2008 and this Second Supplement dated June 30, 2009, which supplements, modifies, and supersedes some of the information contained in the Memorandum and the First Supplement.

EXHIBIT A

Accrual Basis

RE Capital Investments, LLC
Balance Sheet
As of December 31, 2008

	Dec 31, 08	
ASSETS		
Current Assets		
Checking/Savings		
Bank of America Checking - 357		-1,950.66
Cash Reserve		250,000.00
US Bank		3,679.38
Total Checking/Savings		251,728.72
Total Current Assets		251,728.72
Fixed Assets		
Long Term Assets		
Investments - Partnerships	25,500,000.00	
Land Investments (net of 3rd pa	2,000,000.00	
Total Long Term Assets		27,500,000.00
Total Fixed Assets		27,500,000.00
Other Assets		
Investment		
CCS Trop-215, LLC	1,600,000.00	
Clearwater REI (Star)	3,375,000.00	
Horseshoe Bend 400 (Program 1)	6,400,000.00	
ICP - Serene Meadows (20%)	1,600,000.00	
Idaho Partners (Baymont)	105,000.00	
New Meadows	6,400,000.00	
Sanger II	2,640,000.00	
Silver Mountain LLC (30%)	480,000.00	
Tres Rios Equity Partne (64.4%)	2,640,000.00	
WhiteCloud / New Meadow (62%)	1,984,000.00	
Total Investment		27,224,000.00
Note Receivables		
Clearwater - Bunker Hill	436,831.04	
Clearwater - MAC	73,500.00	
Clearwater Lodging		
Additional Capital Interest	25,000.00	
Initial Capital Interest	400,000.00	
Clearwater Lodging - Other	1,540,000.00	
Total Clearwater Lodging	1,965,000.00	
Clearwater REI LLC	458,763.00	
Cude-Barnett	80,000.00	
Heritage Lands LLC -Future Inte	342,357.96	
Horseshoe Bend - 3200 Acres	465,209.16	
Idaho Capital Partners LLC	350,040.00	
Sandpoint Condos	56,000.00	
Silver Mountain LLC	300,000.00	
Tres Rios Equity Partners	516,334.00	
Trop-215 Developer LLC	485,171.17	
Total Note Receivables		5,529,206.33
Total Other Assets		32,753,206.33
TOTAL ASSETS		60,504,935.05
LIABILITIES & EQUITY		
Liabilities		
Long Term Liabilities		
Notes Payable		
Clearwater REI (Star)	2,335,000.00	

Accrual Basis

RE Capital Investments, LLC
Balance Sheet
As of December 31, 2008

	Dec 31, 08
DH	300,000.00
Diamond B Asset Management	434,650.19
Heritage Lands LLC	2,475,000.00
Interest Payable	46,763.00
Terron Investments Inc.	619,000.00
TH	300,000.00
Total Notes Payable	6,510,413.19
Total Long Term Liabilities	6,510,413.19
Total Liabilities	6,510,413.19
Equity	
Land Equity	12,840,000.00
Partnership Equity	41,494,000.00
Retained Earnings	-314,176.01
Net Income	-25,302.13
Total Equity	53,994,521.86
TOTAL LIABILITIES & EQUITY	60,504,935.05

FIRST SUPPLEMENT TO

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

CLEARWATER 2008 NOTE PROGRAM, LLC
$20,000,000 9.0% Notes
(Subject to increase to $40,000,000)

Minimum Investment: $50,000
Minimum Offering Amount: $1,000,000
Maximum Offering Amount: $20,000,000 (Subject to increase to $40,000,000)

Dated: October 3, 2008

This First Supplement (the "First Supplement") is designed to update, through October 3, 2008, the information previously provided in the Confidential Private Placement Memorandum dated August 29, 2008 (the "Memorandum"), which described the Offering by Clearwater 2008 Note Program, LLC (the "Company") of up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015, subject to increase to $40,000,000 (as so supplemented, with all Exhibits to the Memorandum and the Addendum, the "Offering Memorandum"). Capitalized terms used herein without definition shall have the meaning ascribed to them in the Offering Memorandum.

This First Supplement is being furnished for your information on a confidential basis so that you may consider an investment in the Notes described herein and in the Memorandum and should be read together with the Memorandum. This First Supplement is not to be reproduced or used for any other purpose. No person has been authorized to make any statement concerning the Offering other than as set forth in the Memorandum, and any such statement, if made, should not be relied upon. The Notes will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), or any other securities laws. Notes will be offered for investment purposes only pursuant to exemptions from the registration provisions provided under Regulation D of the Securities Act. There will be no public market for the Notes. There are significant risks associated with the Offering. See the Section entitled "Risk Factors" in the Memorandum, as supplemented by this First Supplement.

The Memorandum is not an offer to sell, or a solicitation of an offer to purchase, and no Notes shall be offered or sold to any person in any jurisdiction in which such offer, solicitation, purchase or sale would be unlawful under the securities laws of such jurisdiction. The Offering Memorandum has not been filed with the Securities and Exchange Commission, any securities administrator under state securities laws or any other governmental or self-regulatory authority. None of the SEC, any securities administrators or governmental or self-regulatory authority have passed on the merits of the Offering or the adequacy of the Offering Memorandum. Any representation to the contrary is unlawful.

This First Supplement describes updated information and should be read in its entirety by each investor.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

OFFERING MEMORANDUM

The following information described in the Offering Memorandum is hereby modified and supplemented as follows:

The Company will hold all proceeds of the Offering and all principal amounts repaid to the Company during the term of the program in a bank control account for the benefit of the Noteholders. Funds will be released from the bank control account only upon receipt by bank of approval of a loan from the Company's Investment Committee in accordance with the requirements described in the Memorandum, upon receipt of notice of demand for liquidation of a Noteholder's Note pursuant to the Memorandum, upon receipt of notice that the Company is exercising its right to prepay all or some portion of the Notes, upon receipt of notice that the Company is transferring the proceeds held in the bank control account from the bank to an alternative and more stable financial institution, or upon the maturity of the Notes.

The first paragraph on page 3 of the Memorandum is deleted in its entirety and is replaced with the following:

> This Memorandum contains a limited discussion of tax issues that may be associated with an investment in the Notes by a qualified plan, an IRA or other tax exempt entity. See "INVESTMENT BY QUALIFIED PLANS AND INDIVIDUAL RETIREMENT ACCOUNTS."

The Company intends to provide Noteholders with the information described in the section of the Memorandum entitled "Reports – Annual Report" within 60 days following the end of each calendar year. The Company will provide Noteholders with the information described in the section of the Memorandum entitled "Reports – Tax Information" within the time periods mandated for the delivery of such information by the relevant taxing authority (i.e., 1099s will be delivered not later than January 31). Any and all statements that are inconsistent with the foregoing, and in particular the statements to the contrary contained in the sections of the Memorandum entitled "Reports – Annual Report" and "Reports – Tax Information" are superseded hereby.

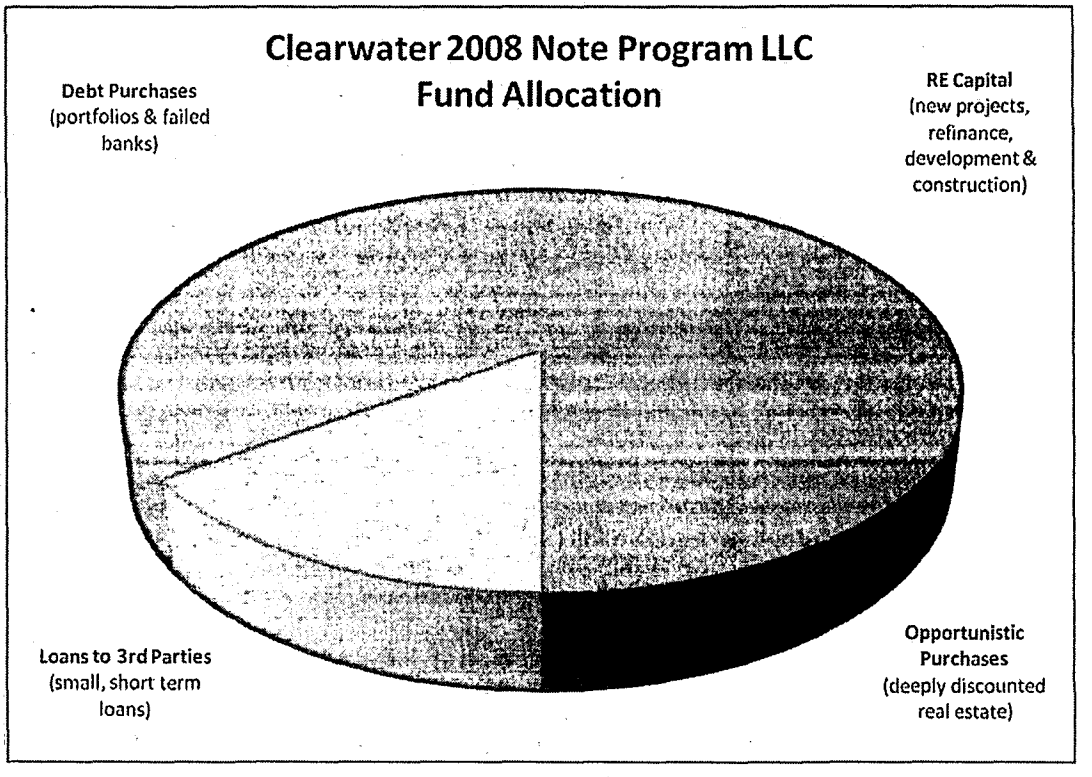
Peter Cooper, Senior Vice President of Sales will assume the role of Director of Sales and Broker Dealer Relations for Clearwater REI, LLC. Mr. Cooper has thirty years of experience in the securities industry and long-term relationships with key industry contacts. Don Steeves, former National Sales Director and Director of Broker Dealer Relations, concluded his employment with Clearwater REI, LLC and is pursuing other opportunities within the real estate and securities industry.

The section of the Memorandum entitled Business Plan is hereby deleted in its entirety and superseded by the following:

> The Clearwater 2008 Note Program, LLC was organized to offer 9% Notes due December 31, 2015, in an aggregate principal amount up to $20,000,000, which amount may be increased to $40,000,000 at the sole discretion of the Company. The net proceeds from the investment monies will be placed in a bank control account. The Company will use said proceeds from the offering of Notes to provide first mortgage financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. Such projects may include, without limitation, acquisition, entitlement, and development of, and construction on, undeveloped real property, and the purchase or refinance of existing real estate assets. It is anticipated that the average overall investment breakdown of the proceeds during the life of the program will be in the following ranges, subject to a combined cap of an average of 100%.
>
> Opportunistic Purchases:
> 30% - 50% will be lent to Affiliates to purchase undervalued real estate in today's current market. These opportunities will be purchased from banks' real estate holdings, distressed sellers, and large development portfolios. The Company is already being presented with numerous opportunities.
>
> Affiliate Loans (RE Capital):
> 10% - 20% into new projects or construction/development of existing affiliate projects. Note funds will not be used for the refinance of existing affiliate projects. Though we are proud of the projects that have been completed or are in the process of being completed, the Company commits that all funds raised in this program will be going to new projects or the construction/development of existing projects that the principals of the Company will invest in personally.

Loans to 3rd Parties:
10% - 20% of the 2008 note funds will be used to provide short term lending to 3rd Parties. These loans will be short in maturity and target diverse property types. Opportunities frequently arise with unrelated parties that own real estate projects that banks are unwilling to finance because of the current debt market. With this note program, the Company may make loans secured by such properties to 3rd parties.

Debt Purchases:
30% - 50% in debt purchases from portfolios, banks, and the FDIC. These loans will retain original borrowers, guarantors, terms and remain fully enforceable. The purchase of existing debt from institutions allows us to "cherry pick" performing and discounted face value loans from groups looking to sell such loans and remove them from their balance sheets. The current regulatory market has put immense pressure on local, regional, and national banks to sell off existing real estate mortgages to increase liquidity. Additionally, our relationship with large mortgage portfolio buyers and hedge funds allows us to select a handful of assets without being burdened with the mixed bag that usually is included in these mortgage sales. This opportunity also allows for the Company to diversify the note program holdings.



The Company's loans will be collateralized by a first position Mortgage or first Deed of Trust only. The Company expects that loans will be diversified around the country though most opportunities will be in the West since that is where the Company is headquartered.

Some attractive real estate investment opportunities require that the transaction be closed within a timeframe shorter than that typically required to secure bank or other forms of financing. The Company may use the proceeds from the offering of Notes to provide the capital required in lieu of bank or other financing. Following closing, the Company intends to put permanent debt or equity in place following the acquisition or development and/or the properties will be sold making the Company's note funds revolving.

Investment Committee
Each proposed loan will be evaluated by a four member Investment Committee. The four member Investment Committee now consists of current principal members of Clearwater REI, LLC, namely: Ron Meyer, Chris Benak, Bart Cochran and Chad Hansen. The Investment Committee will apply the criteria detailed below in making a decision about whether to fund any proposed loan. No loan will be made by the Company without the prior approval of the Investment Committee. See the "Management of the Company – The Manager – Investment Committee" section in the PPM.

Investment Criteria
In order to qualify for loans from the Company, each borrowing entity will be required to provide a loan request detailing its needs, and will be required to satisfy additional requirements.

The primary financial requirement is that the maximum loan to value, at the time that each loan is made, is no greater than the following:

- Pre-entitled land/raw ground – LTV not to exceed 65%
- Entitled land – LTV not to exceed 75%
- Construction and existing commercial or residential structures – LTV not to exceed 80%

The loan to value ratio will be defined by an MAI appraisal. In the absence of an MAI appraisal, the loan to value ratio will be evidenced by a broker's opinion of value or by the Company's determination of value through the utilization of industry acceptable valuation methods. Other requirements that must be met by each borrowing entity will be at the discretion of the Investment Committee. The loan will be secured as a first position Mortgage or first position Deed of Trust on real property.

Documentation Required
The Investment Committee will require, at a minimum, the following documentation:

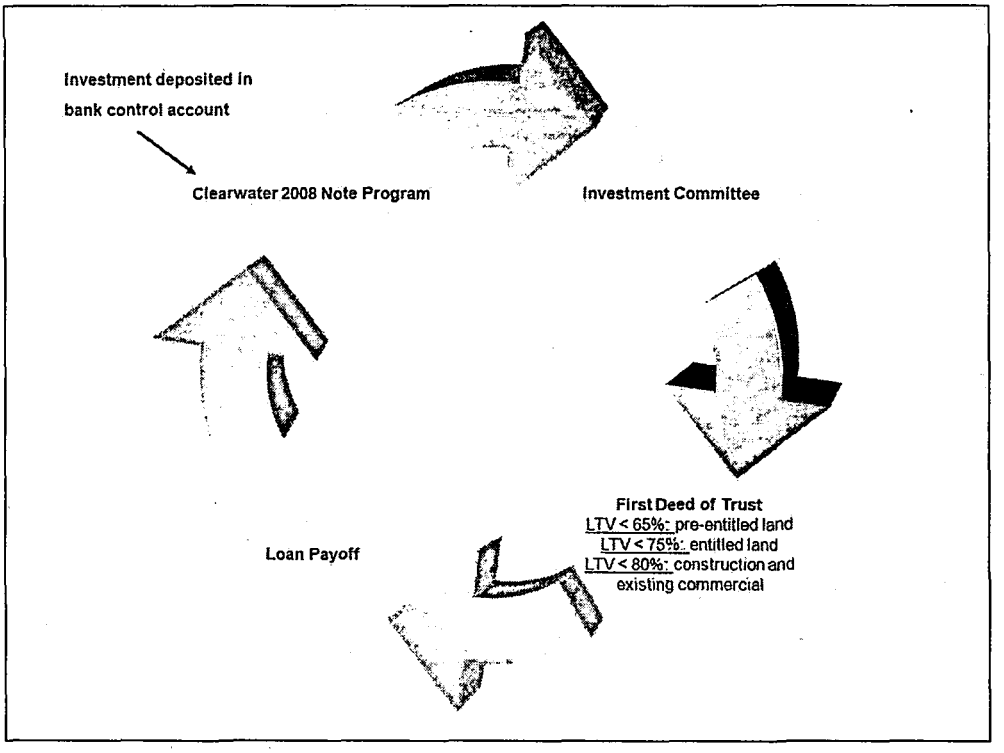
- Borrower Financial Statements
- Budgets or Pro-forma
- Projections
- Operating Statements
- Title & Survey
- Phase I, environmental questionnaire, or soils report (Investment Committee's discretion)
- Appraisal or Opinion of Value (Investment Committee's discretion)

Construction & Development Lending
According to the Investment Criteria, construction and development lending will have a maximum of 80% loan to value. This metric is to be kept at all times during the construction process. An appraisal will be completed prior to the funding of the project to determine the "as completed" value of the property. Funds will be released only as the construction process moves forward - no funds will be pre-drawn.

Committed development funds will be held in an escrow account to be disbursed once the following has been completed:

- Draw request form has been completed
- Lien Waivers from all vendors have been executed
- Construction inspection has been made by Clearwater verifying draw request and percentage completion.

Loan Process & Life C
The following chart depicts the life cycle of loans made by the Company.



The information in this First Supplement supersedes any information to the contrary provided in the Offering Memorandum.

SUPPLEMENTAL INFORMATION - The Private Placement Memorandum for the Offering of Notes consists of this sticker, the Memorandum dated August 29, 2008 and this First Supplement dated October 3, 2008, which supplements, modifies, and supersedes some of the information contained in the Memorandum.

#2207310 v4 033853.00025

EXHIBIT 4

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

February 01, 2010

RE: Clearwater 2008 Note Program, LLC (PPM Kit)

Dear Mark Boling:

Enclosed, please find the Private Placement Memorandum (PPM) for the ***Clearwater 2008 Note Program, LLC.***

The ***Clearwater 2008 Note Program*** offers investors predictable monthly income with an option to reinvest their interest thereby compounding their return. Some of the differences between the ***Clearwater 2008 Note Program*** and other fixed income type investments include but are not limited to the following:

- 9% Annual interest (paid monthly)
- All Note proceeds used to make loans are collateralized by First Mortgages/Deeds of Trust
- Guarantor: RE Capital Investments, LLC (120% net asset coverage on the Principal Only Corporate Guaranty)
- Annual audits by independent CPA firm
- Reinvestment Option (interest compounded monthly)
- Liquidity: Annually, limited to 10% of offering proceeds
- Suitable for Qualified Plans (No UBTI)
- Suitability: Accredited Investors Only

If you should have any questions or need assistance with the enclosed information, please feel free to contact your wholesale representative using the information provided below and they will gladly assist you.

Thanks for your consideration to Clearwater and we look forward to serving you and your valued clients.

Sincerely,
Clearwater Real Estate Investments

CLEARWATER
REAL ESTATE INVESTMENTS

Rob Ruebel
Regional Vice President of Sales

Office: 208.639.4493
Mobile: 208.407.5881
rob@clearwaterrei.com

Clearwater Real Estate Investments
1300 E State Street | Eagle, Idaho 83616
866.217.4906 | www.clearwaterrei.com

Clearwater 2008 Note Program

» Investment Summary

ACCREDITED INVESTORS ONLY

» Overview

The Clearwater 2008 Note Program, LLC (the "Company") primary business strategy is to use the net proceeds from the offering of the Notes to provide first mortgage financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. The Notes are backed by first liens and also include a corporate guaranty. As additional safeguards to preserve investor capital, this program is governed by strict guidelines set forth in the third party escrow control agreement and undergoes an annual audit by a reputable independent CPA firm.

TOTAL OFFERING [1]

$20,000,000

MINIMUM INVESTMENT [2]

$50,000

ANNUAL INTEREST RATE

9.0%

DISTRIBUTION PERIOD [3]

Monthly

MATURITY DATE [4]

12/31/2015

(1) Subject to increase to $40MM.
(2) Manager's Discretion (currently accepting $25,000)
(3) Reinvestment Option Available
(4) Annual Liquidity beginning December 31, 2010 (See PPM for details)

» Investment Highlights

- » 9% Annual interest (paid monthly)
- » All Note proceeds used to make loans are collateralized by First Mortgages/Deeds of Trust
- » Guarantor: RE Capital Investments, LLC (120% net asset coverage on the Principal Only Corporate Guaranty)
- » Annual audits by independent CPA firm
- » Reinvestment Option (interest compounded monthly)
- » Liquidity: Annually, limited to 10% of offering proceeds beginning 12/31/2010
- » Suitable for Qualified Plans (No UBTI)
- » Suitability: Accredited Investors Only

Manager

Clearwater Real Estate Investments has leveraged its relationship with its affiliates to access a portfolio of over $1 billion of commercial and residential projects located in California, Idaho, Nevada and Arizona. The Principals have over 20 years of real estate experience with a proven track record which includes raw land, entitlements, improvements, construction and sale of residential subdivisions, industrial, office, hotel, condo and master planned communities.

Clearwater's affiliates currently control over 544 thousand square feet in commercial real estate and have 264 residential and office condominium units, own and operate 3 hotels with 317 rooms and have a management contract with a resort and golf club.

In total, the Company and its affiliates have current projects in various stages of completion valued at approximately $410 million.

Clearwater Real Estate Investments
1300 E State Street | Eagle, Idaho 83616
866.217.4906 | www.clearwaterrei.com

Clearwat 2008 Note Program

» Investment Summary

ACCREDITED INVESTORS ONL

Interest Options

Option 1: Interest Payment Option [1]

Noteholders may elect to receive monthly interest payments at 9.0% simple interest on their principal investment.

Year	Annual Principal Amount	% Annual Simple Interest Rate	Annual Dollar Return	Cumulative Dollar Return
1	$100,000	9.00%	$9,000	$9,000
2	$100,000	9.00%	$9,000	$18,000
3	$100,000	9.00%	$9,000	$27,000
4	$100,000	9.00%	$9,000	$36,000
5	$100,000	9.00%	$9,000	$45,000
6	$100,000	9.00%	$9,000	$54,000
7	$100,000	9.00%	$9,000	$63,000
Avg Annual Return:		9.00%	Total:	$63,000

Option 2: Interest Reinvestment Plan [2]

Noteholders may elect to have interest reinvested and compounded monthly. Reinvested interest will begin to accrue interest as of its payment date and will be compounded at the annual rate of 9.0%.

Year	Annual Principal Amount	% Annual Compounded Interest Rate (3)	Annual $ Available for Reinvestment	Cumulative $ Amount Reinvested
1	$100,000	9.38%	$9,381	$9,381
2	$100,000	10.26%	$10,261	$19,641
3	$100,000	11.22%	$11,223	$30,865
4	$100,000	12.28%	$12,276	$43,141
5	$100,000	13.43%	$13,428	$56,568
6	$100,000	14.69%	$14,687	$71,255
7	$100,000	16.06%	$16,065	$87,320
Avg Annual Return:		12.47%	Total:	$87,320

To Achieve Projections Above:

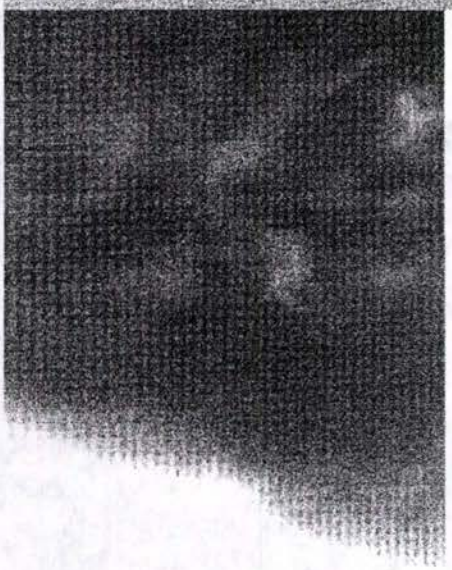
(1) Assumes investment is held for entire projected term. Interest rate of 9.0% is cumulative, non-compounding annual interest rate.
(2) Assumes investment is held for entire projected term. Compounded rate calculated as a percent return based on original investment amount and averaged over each additional year.
(3) Rate based on original investment and compounded monthly. Rate represents entire 12-month compounded annual return.

IMPORTANT DISCLAIMER:

The information contained herein is for informational purposes only about a potential investment that may or may not be offered at a later date pursuant to the terms of the Private Placement Memorandum. This material contains projections and assumptions based on current information and may change at a later date. This material does not constitute an offer to sell nor a solicitation to buy any security. Such offers can be made only by the Confidential Private Placement Memorandum. This material cannot and does not replace the Confidential Private Placement Memorandum. These investments involve a high degree of risk and are highly speculative; investors should refer to the "Risk Factors" of the Memorandum. There is no assurance or guarantee that the cash flow, profits, or capital of the Company will be sufficient to pay all interest and repay principal on the Notes.

RISK FACTORS:

» there is no certainty as to investment in Notes being profitable;
» underlying risks inherent to the individual real estate projects for which the proceeds are used, including the risks associated with residential and commercial development;
» risks of national, regional, and local economic downturn;
» the Notes are not a diversified investment; and
» there are various conflicts of interest among the Company, the Manager and their Affiliates.



Who We Are

What We Do

Experience

Benefits of Clearwater Real Estate Investments

This document does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment involves risk. Past performance and/or forward statements are never an assurance of future results. Securities Offered Through Select Capital Corporation Member FINRA/SIPC. Select Capital Corporation, 2870 Bristol Street, Suite 650, Costa Mesa, CA 92626.

CLEARWATER
REAL ESTATE INVESTMENTS

866.217.4906 toll-free | www.clearwaterrei.com

Barton C. Cochran

Chad J. Hansen

Peter B. Cooper

Ronald D. Meyer

Christopher J. Benak

This document does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Securities Offered Through Select Capital Corporation, Member FINRA/SIPC. Select Capital Corporation 0831, 3070 Bristol Street, Suite 560, Costa Mesa, CA 92626.

CLEARWATER
REAL ESTATE INVESTMENTS

866.217.4906 toll-free | www.clearwaterrei.com

A Legacy of Success

In collaboration with our partners and affiliates, Clearwater Real Estate Investments has access to a premier portfolio of commercial and residential projects located in California, Idaho, Arizona, Utah, Kansas City, Missouri and Texas. Our products often lead the market through innovation and creativity. Our Principals have over 20 years of combined real estate experience with a focus on land acquisition, entitlement and development.

Clearwater's affiliates currently have access to industrial, retail and restaurants in various stages of entitlement, improvement, design, build, sale or lease. They also own and operate a number of residential and office condominium units and have management contracts with resort and golf clubs. Currently, they have more than 3,500 acres in the entitlement process for single family subdivision and master planned communities.

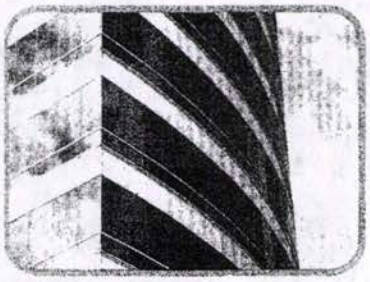
These affiliates have a proven track record of providing impressive returns to their investor clients on past projects and always seek to warrant the confidence and trust an investor places in them.

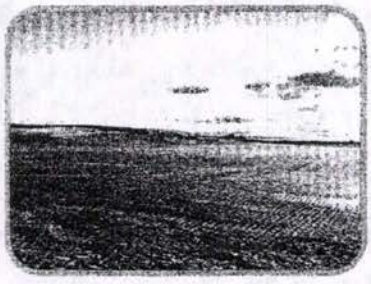
COMPLETED PROJECTS:

Project	Type	Location
Custom Home Projects 1-4	Custom Project	Los Altos, CA
Custom Home Projects 5-10	Custom Project	Morro Bay, CA
Villa Mira 1	Subdivision	Sanger, CA
Villa Mira 2	Subdivision	Sanger, CA
Villa Mira 3	Subdivision	Sanger, CA
Villa Mira 4	Subdivision	Sanger, CA
Vintage Square	PUD	Sanger, CA
Sanger Land	Unimproved Land	Sanger, CA
Sheridan Place	Subdivision	Meridian, ID
Sherwood Meadows	Subdivision	Nampa, ID
Buellton Industrial 1	Office/Industrial	Buellton, CA
Buellton Industrial 2	Office/Industrial	Buellton, CA
The Idaho Club	Resort/Golf	Coeur d'Alene, ID
Baymont Hotel	Hotel	Kellogg, ID

PROJECT HISTORY

Affiliate Partners Only





ACTIVE PROJECTS:

Project	Type	Location
Madera Ranch	Subdivision	Madera, CA
Ahwahnee Preserve	Equestrian, SFR	Ahwahnee, CA
Jade	Commercial Land	Meridian, ID
Hope Ridge Estates	Subdivision	Star, ID
Sundance Ranch Estates	Equestrian Community	Kuna, ID
Montour Valley Ranch 1	Subdivision	Horseshoe Bend, ID
Riverbend Estates	Subdivision	Horseshoe Bend, ID
Eagle Ridge Estates	Subdivision	Horseshoe Bend, ID
Horseshoe Bend	Commercial	Horseshoe Bend, ID
Horseshoe Bend	Master Plan Community	Horseshoe Bend, ID
Preserve Town Center	Commercial	Horseshoe Bend, ID
Sandpoint Condos	Condominiums	Sandpoint, ID
Bunker Hill Condominiums	Condominiums	Kellogg, ID
Woodsman Condo-Hotel	Condo, Hotel/Retail	McCall, ID
New Meadows Master Plan	Subdivision	New Meadows, ID
Greenfield Terrace	Equestrian Community	Boise, ID
Tres Rios Condos	Condominiums	Avondale, AZ
Tres Rios Retail	PADD	Avondale, AZ
Avondale Office Condos	Office Condos	Avondale, AZ
Glendale Commercial	Restaurants	Glendale, AZ
Bank Building	Bank	Avondale, AZ
Glendale Office Condos	Office Condos	Glendale, AZ
Office Building	Office	Glendale, AZ
Aloft Hotel "Starwood Product"	Hotel	Glendale, AZ
Radisson Hotel	Hotel	Glendale, AZ

This document does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Securities Offered Through Select Capital Corporation Member FINRA/SIPC. Select Capital Corporation OSJ: 3670 Bristol Street, Suite 500, Costa Mesa, CA 92626.

CLEARWATER
REAL ESTATE INVESTMENTS

866.217.4906 toll-free | www.clearwaterrei.com

Our Social and Environmental Responsibility Commitment

"The confidence to believe that we can change the world... locally and globally."

This document does not represent an offer to sell or a solicitation of an offer to purchase securities. Any such offer will be made solely pursuant to the Private Placement Memorandum. All investment strategies have the potential for profit or loss. Past performance and forward-looking statements are never an assurance of future results. Securities offered through Select Capital Corporation Member FINRA/SIPC. Select Capital Corporation is located at 3200 E. Guasti Road, Suite 500, Ontario, CA 91761.

CLEARWATER
REAL ESTATE INVESTMENTS

866.217.4906 toll-free | www.clearwaterrei.com

EXHIBIT 5

PPM BOOK NUMBER
08Note-A238

INSTRUCTIONS TO INVESTORS

Clearwater 2008 Note Program, LLC
9.0% Notes Due December 31, 2015

Please read carefully the Private Placement Memorandum dated August 18, 2008 for the sale of $20,000,000 (subject to increase to $40,000,000) in aggregate principal amount of 9.0% Notes due December 31, 2015 ("Notes") issued by Clearwater 2008 Note Program, LLC, an Idaho limited liability company ("Company"), as supplemented from time to time, and all Exhibits thereto (collectively, the "Memorandum"), before deciding to subscribe. Capitalized terms not defined herein have the meanings set forth in the Memorandum.

Each prospective investor in Notes should examine the suitability of this type of investment in the context of his/her own needs, investment objectives and financial capabilities and should make his/her own independent investigation and decision as to suitability and as to the risk and potential gain involved. Also, each prospective investor in Notes is encouraged to consult with his/her attorney, accountant, financial consultant or other business or tax advisor regarding the risks and merits of the proposed investment.

This Offering is limited to investors who certify that they meet all of the qualifications set forth in the Memorandum for the purchase of Notes.

If you meet these qualifications and desire to purchase Notes, then please complete, execute and deliver the attached Subscription Agreement along with your check, payable to "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC" in the amount of the Subscription Payment.

Subscription Agreements and all attachments should be mailed or delivered to the Company at:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

All funds should be mailed, delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

Wire Instructions:
Account Number: [redacted]
Routing/ABA Number: [redacted]
Account Name: Clearwater 2008 Note Program, LLC

Upon receipt of this signed Subscription Agreement, verification of your investment qualifications and acceptance of your subscription by the Company (the Company reserves the right, in its sole discretion, to accept or reject a subscription for any or no reason whatsoever), the Company will notify you of receipt and acceptance of your subscription.

Important Note: **The person or entity actually making the decision to invest in Notes should complete and execute this Subscription Agreement. For example, retirement plans often hold certain investments in trust for their beneficiaries, but the beneficiaries may maintain investment control and discretion. In such a situation, the beneficiary with investment control must complete and execute this Subscription Agreement (this also applies to trusts, custodial accounts and similar arrangements).**

INTERNAL USE ONLY
Date Rec'd: 2/24/10
By: 2/24/10

SUBSCRIPTION AGREEMENT

Clearwater 2008 Note Program, LLC
9.0% Notes Due December 31, 2015

This is the offer and agreement ("Subscription Agreement") of the undersigned to purchase $50,000.00 ($50,000 minimum investment) in principal amount of 9.0% Notes due December 31, 2015 ("Notes") to be issued by Clearwater 2008 Note Program, LLC, an Idaho limited liability company (the "Company") ("Subscription Price"), subject to the terms, conditions, acknowledgments, representations and warranties stated herein and in the Confidential Private Placement Memorandum relating to the offer of up to $20,000,000 (subject to increase to $40,000,000) in aggregate principal amount in Notes dated August 29, 2008, as supplemented from time to time (the "Memorandum"). I am including with this Subscription Agreement a check payable to the order of "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC" in the amount of $50,000.00, representing the Subscription Price for the Notes I am purchasing. All terms utilized herein shall have the same meaning as set forth in the Memorandum.

In order to induce the Company to accept this Subscription Agreement for Notes and as further consideration for such acceptance, I hereby make the following acknowledgments, representations and warranties with the full knowledge that the Company will expressly rely thereon in making a decision to accept or reject this Subscription Agreement:

1. I hereby adopt, confirm and agree to all of the covenants, representations and warranties set out in this Subscription [redacted]
2. My primary state [redacted]
3. My date of birth [redacted].
4. If I am a natural person, I hereby represent and warrant that (check as appropriate):
   (a) _X_ I, together with my spouse, have a net worth, inclusive of home, home furnishings and personal automobiles, in excess of $1,000,000; or
   (b) _____ I have individual income in excess of $200,000, or joint income with my spouse, in excess of $300,000, in each of the two most recent years, and I reasonably expect individual or joint income in excess of that amount in the current year.
5. If other than a natural person, such entity represents and warrants that (check as appropriate):
   _____ it is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.
6. If other than a natural person, is such entity a benefit plan qualified under Code Section 401(a), a benefit plan subject to ERISA, an individual retirement account or arrangement under Code Section 408 or any other company sponsored employee benefit plan or program?
   _____ Yes. _____ No.
7. Neither I nor any subsidiary, affiliate, owner, shareholder, partner, member, indemnitor, guarantor or related person or entity:
   (a) is a Sanctioned Person (as defined below);
   (b) has more than 15% of its assets in Sanctioned Countries (as defined below); or
   (c) derives more than 15% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries.

   For purposes of the foregoing, a "Sanctioned Person" shall mean (a) a person named on the list of "specially designated nationals" or "blocked persons" maintained by the U.S. Office of Foreign Assets Control ("*OFAC*") at *http://www.treas.gov/offices/eotffc/ofac/sdn/index.html*, or as otherwise published from time to time, or (b) (1) an agency of the government of a Sanctioned Country, (2) an organization controlled by a Sanctioned Country, or (3) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. A "Sanctioned Country" shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available at *http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html*, or as otherwise published from time to time.
8. Under penalties of perjury, I certify (a) that the number shown on this form is my correct taxpayer identification number and (b) that I am not subject to backup withholding, either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends or the Internal Revenue Service has notified me that I am no longer subject to backup withholding. **(Please strike out the language certifying that you are not subject to backup withholding due to notified payee under-reporting if you have been notified that you are subject to backup withholding due to notified payee under-reporting, and you have not**

received a notice from the Internal Revenue Service advising you that backup withholding has terminated.)

9. I further represent and warrant that such investment is not disproportionate to my income or available liquid funds and that I further have the capacity to protect my interests in connection with the purchase of the Notes.

10. I (we) wish to own my (our) Notes as follows (check one):

X (a) Separate or individual property. (In community property states, if the purchaser is married, his (her) spouse must submit written consent if community funds will be used to purchase the Notes.)

____ (b) Husband and Wife as community property. (Community property states only. Husband and Wife should both sign all required documents unless advised by their attorney that one signature is sufficient.)

____ (c) Joint Tenants with right of survivorship. (Both parties must sign all required documents unless advised by their attorneys that one signature is sufficient.)

____ (d) Tenants in Common. (Both parties must sign all required documents.)

____ (e) Trust. (Attach copy of trust instrument and include name of trust, name of trustee and date trust was formed.)

____ (f) Partnership or Limited Liability Company. (Attach copy of articles or certificate, if any, and partnership agreement or operating agreement and include evidence of authority for person who executes required documents.)

____ (g) Husband and Wife with right of survivorship. (Husband and wife should sign all documents unless other advised by their attorney.)

____ (h) IRA or Qualified Plan: _____

____ (i) Other (indicate): _____

11. If the owner of Notes is an entity (trust, LLC, Partnership, etc.) my relationship to the owning entity is _____ (trustee, owner, partner, etc.)

Subscriber's Signature: X Mark Bolin Date: 2/12/10

Subscriber's Signature: X _____ Date: _____

1. I understand that in the event this Subscription Agreement is not accepted or, if accepted, the Offering is subsequently terminated or cancelled then the funds transmitted herewith shall be returned to the undersigned and this Subscription Agreement shall be terminated and of no further effect. RB Capital, LLC has agreed to guarantee the repayment of principal under the Notes. By executing this Subscription Agreement, each prospective investor of Notes approves the foregoing, acknowledges the risks described in the section of the Memorandum entitled "Risk Factors," and waives those provisions of the Securities Exchange Act of 1934, as amended, generally governing funds held in escrow prior to closing an offering.

2. I acknowledge that I have received, read and fully understand the Memorandum. I acknowledge that I am basing my decision to invest in Notes on the Memorandum and I have relied only on the information contained in said materials and have not relied upon any representations made by any other person. I recognize that an investment in Notes involves substantial risk and I am fully cognizant of and understand all of the risk factors related to the purchase of Notes, including, but not limited to, those risks set forth in the sections of the Memorandum entitled "Risk Factors."

3. My overall commitment to investments that are not readily marketable is not disproportionate to my individual net worth, and my investment in Notes will not cause such overall commitment to become excessive. I have adequate means of providing for my financial requirements, both current and anticipated, and have no need for liquidity in this investment. I can bear and am willing to accept the economic risk of losing my entire investment in Notes.

4. I acknowledge that the sale of Notes has not been accompanied by the publication of any advertisement, any general solicitation or as the direct result of an investment seminar sponsored by the Company or any of its Affiliates.

5. All information that I have provided to the Company herein concerning my suitability to invest in Notes is complete, accurate and correct as of the date of my signature on the last page of this Subscription Agreement. I hereby agree to notify the Company immediately of any material change in any such information occurring prior to the acceptance of this Subscription Agreement, including any information about changes concerning my net worth and financial position.

6. I have had the opportunity to ask questions of, and receive answers from, the Company and the Manager concerning the Company, the creation or operation of the Company or terms and conditions of the offering of Notes, and to obtain any additional information deemed necessary to verify the accuracy of the information contained in the Memorandum. I have been

provided with all materials and information requested by either me or others representing me, including any information requested to verify any information furnished to me.

7. I am purchasing Notes for my own account and for investment purposes only and have no present intention, understanding or arrangement for the distribution, transfer, assignment, resale or subdivision of Notes. I understand that, due to the restrictions referred to in Paragraph 8 below, and the lack of any market existing or to exist for Notes, my investment in the Company will be highly illiquid and may have to be held indefinitely.

8. I am fully aware that Notes subscribed for hereunder have not been registered with the Securities and Exchange Commission in reliance on an exemption specified in Regulation D under the Securities Act of 1933, as amended, which reliance is based in part upon my representations set forth herein. I understand that Notes subscribed for herein have not been registered under applicable state securities laws and are being offered and sold pursuant to the exemptions specified in said laws, and unless they are registered, they may not be re-offered for sale or resold except in a transaction or as a security exempt under those laws. I further understand that the specific approval of such resales by the state securities administrator may be required in some states. **Notes have not been approved or disapproved by the United States Securities and Exchange Commission or other regulatory authority, nor have any of the foregoing authorities passed upon or endorsed the merits of this Offering or the accuracy or adequacy of the Memorandum. Any representation to the contrary is unlawful.**

9. I acknowledge that Home Federal Bank is acting solely as escrow holder in connection with the Offering of Notes, and makes no recommendations with respect thereto. I understand that Home Federal Bank has made no investigation regarding the Offering, Notes, the Company, the Manager, their Affiliates or their officers and directors, or any other person or entity involved in the Offering.

10. This Subscription Agreement shall be construed in accordance with and governed by the laws of the State of Idaho without regard to its choice of law provisions.

11. I hereby covenant and agree that any dispute, controversy or other claim arising under, out of or relating to this Agreement or any of the transactions contemplated hereby, or any amendment thereof, or the breach or interpretation hereof or thereof, shall be determined and settled in binding arbitration in Boise, Idaho, in accordance with applicable Idaho law, and with the rules and procedures of The American Arbitration Association. The prevailing party shall be entitled to an award of its reasonable costs and expenses, including, but not limited to, attorneys' fees, in addition to any other available remedies. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives, and judgment may be entered thereon in any court of competent jurisdiction. **BY EXECUTING THIS AGREEMENT, YOU ARE AGREEING TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE SUCH DISPUTES LITIGATED IN A COURT OR JURY TRIAL, AND YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE. BY EXECUTING THIS AGREEMENT, YOU HEREBY CONFIRM THAT YOUR AGREEMENTS TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

12. **I hereby agree to indemnify, defend and hold harmless the Company, the Manager, their Affiliates and all of their members, managers, shareholders, officers, employees, affiliates and advisors, from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that they may incur by reason of my failure to fulfill all of the terms and conditions of this Subscription Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished to any of the foregoing in connection with this transaction. This indemnification includes, but is not limited to, any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) incurred by the Company, the Manager, their Affiliates and any of their members, managers, shareholders, directors, officers, employees, affiliates or advisors, defending against any alleged violation of federal or state securities laws which is based upon or related to any untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished in connection with this transaction.**

13. I hereby acknowledge and agree that : (a) I may not transfer or assign this Subscription Agreement, or any interest herein, and any purported transfer shall be void; (b) except as specifically described herein, I am not entitled to cancel, terminate or revoke this Subscription Agreement and that this Subscription Agreement will be binding on my heirs, successors and personal representatives; provided, however, that if the Company rejects this Subscription Agreement, this Subscription Agreement shall be automatically canceled, terminated and revoked; (c) this Subscription Agreement and the Memorandum, together with all attachments and exhibits thereto, constitute the entire agreement among the parties hereto with respect to the sale of Notes and may be amended, modified or terminated only by a writing executed by all parties (except as provided herein with respect to rejection of this Subscription Agreement by the Company); (d) within two days after receipt of a written request from the Company, the undersigned agrees to provide such information and to execute and deliver such documents as may be necessary to comply with any and all laws and regulations to which the Company is subject; and (e) the representations and warranties of the undersigned set forth herein shall survive the sale of Notes pursuant to this Subscription Agreement.

14. I am not making this investment in any manner as a representative of a charitable remainder unitrust or a charitable remainder trust.

Initial Here_____ Initial Here_____

(SPECIAL INSTRUCTIONS: In all cases, the person/entity making the investment decision to purchase Notes must complete and sign the Subscription Agreement. For example, if the form of ownership designated above is a retirement plan for which investments are directed or made by a third party trustee, then that third party trustee must complete this Subscription Agreement rather than the beneficiaries under the retirement plan. Investors must list their principal place of residence rather than their office or other address on the signature page so that the Company can confirm compliance with appropriate securities laws. If you wish correspondence sent to some address other than your principal residence, please provide a mailing address in the blank provided below. Additionally, in an attempt to expedite the delivery of material information, the Company asks (but does not require) that you list a secondary contact source that may be able to reach you, if you are unavailable through any other reasonable means listed below.)

IN WITNESS WHEREOF, I (we) has executed this Subscription Agreement this 12 day of February, 2010.

A. REGISTRATION INFORMATION or CUSTODIAN INFORMATION (if applicable)
Send ALL paperwork directly to the custodian

Please print the exact name (registration) investor desires on account:
MARK Boling

Mailing address: 21986 Cayuga Lane
Lake Forest, CA 92630

E-mail address: maboling@earthlink.net

B. INVESTOR INFORMATION

Please send all investor correspondence to the following:

Name: MARK Boling

Address: 21986 Cayuga Lane, Lake Forest, CA 92630

Investor Phone: Business ([redacted]) [redacted] Home: ([redacted]) [redacted]

Investor Fax: Business ([redacted]) [redacted] Home: ([redacted]) [redacted]

Primary State of Residence: California

Social Security or Federal Tax ID Number: [redacted]

C. SECONDARY CONTACT INFORMATION (OPTIONAL)

If the Company is unable to contact the Subscriber directly through any reasonable means provided by the Subscriber hereby, please contact the following individual who will be instructed by Subscriber to inform him/her that Subscriber should contact the Company as expeditiously as possible:

Secondary Contact Name: Patricia Mocella

Secondary Contact Address: 21986 Cayuga Lane, Lake Forest, CA 92630

Secondary Contact Phone: Business (___) _____ Home: ([redacted]) [redacted]

Secondary Contact Fax: Business (___) _____ Home: ([redacted]) [redacted]

D. ELECTION TO PARTICIPATE IN INTEREST REINVESTMENT PROGRAM

If you wish to participate in the Interest Reinvestment Program, please initial here: _____

If you wish to receive monthly distributions of interest, please initial here: MB

You will have the opportunity once annually to change your election by giving written notice thereof to the Company no later than November 30th in the year prior to the election year.

E. SIGNATURES

THE UNDERSIGNED HAS THE AUTHORITY TO ENTER INTO THIS SUBSCRIPTION AGREEMENT ON BEHALF OF THE PERSON(S) OR ENTITY REGISTERED IN A. ABOVE.

Executed this 12 day of February, 2010, at Lake Forest, CA

X Mark Boling
Signature (Investor, or authorized signatory)

X _____
Signature (Investor, or authorized signatory)

F. SUBMIT SUBSCRIPTION

Mail the executed Subscription Agreement to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

The check (make payable to "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC") or funds should be wired, mailed or delivered to:

All funds should be delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

Wire Instructions:

Account Number: [redacted]
Routing/ABA Number: [redacted]
Account Name: Clearwater 2008 Note Program, LLC

Subscription Accepted:

Clearwater 2008 Note Program, LLC

By: Clearwater REI, LLC
an Idaho limited liability company
Its: Manager

By: _____ Date: 2/26/10

Name: Bart Cowan

Its: Mgr

EXHIBIT 6

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

March 1, 2010

To: Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

Re: **Clearwater 2008 Note Program, LLC**

Dear Valued Investor,

Thank you for choosing Clearwater Real Estate Investments (Clearwater) and allowing us to assist you with your investment goals. The purpose of this letter is to notify and confirm your subscription has been received and accepted. Please note your investment information below.

Investment Information

Owner:	Mark Boling
Offering Name:	Clearwater 2008 Note Program, LLC
Custodian Acct Number:	n/a
Certificate Number:	08-470
Principal Amount:	$ 50,000.00
Effective Date:	2/27/10

Account Statements
As a Clearwater client, you will receive regular updates of your account activity on account statements.

Also, please find the following documents to keep for your records:

1) Certificate
2) Instructions to Investors & Subscription Agreement (signed accepted copy)
3) Master Note (signed copy)

For your convenience, please find a Direct Deposit Request Form enclosed hereto. If you would like to receive your monthly distributions via ACH direct deposit, simply complete the form and attach a voided check and return as indicated on the form. *Note: If you have (i) elected to participate in the Interest Reinvestment Plan (IRP), (ii) already submitted a direct deposit request form or (iii) your investment involves a custodial account please ignore this form.*

Clearwater is dedicated to providing the highest level of service and seeks to always warrant the trust and confidence you have placed in us. Please call us toll-free at (866) 217-4906 or you can send us an email at InvestorServices@clearwaterrei.com for any questions/assistance regarding your investment(s) with us.

Sincerely,

Investor Services
Toll-free: (866) 217-4906
InvestorServices@clearwaterrei.com

Enclosure(s)

EXHIBIT 7

LITHO. IN U.S.A.
© 1998 GOES 33625
All Rights Reserved

CLEARWATER
REAL ESTATE INVESTMENTS

Certificate

CLEARWATER 2008 NOTE PROGRAM, LLC

Certificate No. **08-470** *Amount* **$ 50,000.00**

Issued to **Mark Boling**

Effective Date **2/27/10**

Custodian Account No. **n/a**

BtC

Bart Cochran, Manager

EXHIBIT 8

NOTICE: THIS NOTE HAS NOT BEEN REGISTERED PURSUANT TO ANY FEDERAL OR STATE SECURITIES LAW. THIS NOTE MAY NOT BE TRANSFERRED OR RESOLD, EXCEPT AS PERMITTED UNDER (A) THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM, AND (B) THE RESTRICTIONS OF SECTION 10 HEREOF.

NOTE

$20,000,000 (subject to increase to $40,000,000) August 29, 2008

FOR VALUABLE CONSIDERATION, the receipt, adequacy and sufficiency of which are hereby acknowledged, Clearwater 2008 Note Program, LLC, an Idaho limited liability company ("Maker"), promises to pay to the parties listed on Exhibit A attached hereto (the "Noteholders"), the aggregate principal amount of Twenty Million and 00/100 Dollars ($20,000,000) with the option to increase to Forty Million and 00/100 Dollars ($40,000,000), together with interest, late charges, costs and expenses, and all other amounts described below in accordance with the following terms and provisions:

Section 1. Definitions. Unless the context expressly or by necessary implication otherwise requires, (a) in addition to any terms defined elsewhere in this Note, the capitalized terms defined in this Section 1 shall, for the purposes of this Note, have the meanings set forth below and (b) except as otherwise defined or limited herein, terms defined in the Memorandum when used herein shall have the respective meanings assigned to them in the Memorandum.

"Funding Date" shall mean the date on which the proceeds from the Maker's sale of Notes to Note Holders are released from escrow as described in the Memorandum.

"Interest" shall mean, collectively, the per annum interest payable on the outstanding principal hereof under Section 2 hereof.

"Maturity Date" shall mean December 31, 2015.

"Memorandum" shall mean Maker's Confidential Private Placement Memorandum dated August 18, 2008, as amended or supplemented from time to time, relating to the offer and sale by the Maker of up to $20,000,000 of Notes (subject to increase to $40,000,000).

"Noteholder" shall mean any person or entity hereafter purchasing a Note in accordance with the Memorandum, subject to the provisions of the Transaction Documents applicable thereto, and any successor or assign thereof or other or entity acquiring an interest herein at any time.

"Transaction Documents" shall mean this Note, the Subscription Agreement and the Memorandum.

Section 2. Interest.

Section 2.1 Fixed Interest. Commencing on the date hereof and continuing until December 31, 2015, the outstanding principal hereunder shall bear interest at a fixed annual rate of 9.0%.

Section 2.2. Computation. Interest shall be computed on the basis of a year of 360 days prorated for the actual number of days occurring in the period for which such Interest is payable.

Section 3. Payments; Accrual. Commencing on the fifteenth day of the month next following the Funding Date and continuing on the fifteenth day of each month thereafter until the outstanding principal hereof is paid in full, Maker shall pay to, or accrue and compound for the benefit of, the Noteholders all unpaid Interest in an amount equal to the product of the principal amount hereunder and that fraction the numerator of which is a Noteholder's principal investment and the denominator of which is the principal amount hereunder. If not sooner paid, Maker shall pay the principal balance hereof in full on the Maturity Date, together with all unpaid accrued Interest. Maker shall make all payments of Interest, late charges, and principal to the Noteholders at their respective addresses on file with the Maker as of the day which is ten days prior to the due date of such payment, on or before the date when due, without notice, deduction or offset. All payments hereunder shall be made in lawful money of the United States of America.

Section 4. Prepayment. Maker shall have the right to prepay this Note at any time after December 31, 2011 without penalty or premium upon payment to the Noteholders of the outstanding principal balance of the Note and accrued unpaid Interest.

Section 5. Put Rights. Beginning December 31, 2010 and once annually thereafter, up to 10% of the original principal amount may be called by the Noteholders upon not less than 30 days written notice to the Maker.

Notwithstanding the foregoing, upon the death of a Noteholder, the personal representative of such Noteholder may call the Note of such Noteholder and will receive the principal amount of such note, plus all accrued but unpaid principal thereon by giving written notice to the Company not less than 6 months following the date of death of such Noteholder. Interest will be payable through the date of which the notice is received by the Company and all principal and interest will be paid by the Company not later than 30 days following receipt of such notice.

Section 6. Late Charges. Maker recognizes that a default by Maker in making, when due, any of the payments required under this Note will result in the Noteholders incurring additional expenses, including by way of illustration, additional expenses in connection with sending notices of default, loss to the Noteholders of the use of the money due, and frustration to the Noteholders in meeting their other financial commitments. If, for any reason, Maker fails to fully pay any installment of Interest or principal plus Interest when due under this Note, whether or not any notice that such payments are due and payable is given, the Noteholders shall be entitled to damages for the detriment caused thereby. Because it is extremely difficult and impractical to ascertain the extent of such damages, Maker therefore agrees that a late charge equal to 5% of each payment of Interest or principal that is not paid within 10 days after its due date is a reasonable estimate of the fair compensation for the loss and damages the Noteholders will suffer. Further, Maker hereby agrees that such amount shall be presumed to be the amount of damages sustained by Noteholders in such case, and such sum shall be added to amount then due and payable.

Section 7. Liability. This Note is an obligation of Maker solely, is not an obligation of any of Maker's members, managers, or affiliates, and is unsecured; however, the repayment of the principal amount here of is guaranteed pursuant to that certain Guaranty a copy of which is attached to the Memorandum.. The Noteholders shall look exclusively to Maker and not to any such member, manager, or affiliate or the assets thereof for satisfaction of all such obligations and shall not seek to enforce any deficiency for payment thereof against any such member or manager in any capacity whatsoever or seek to collect payment thereof directly from any such member or manager whatsoever.

Section 8. Events of Default and Remedies.

Section 8.1. Events of Default. Any of the following occurrences shall constitute an "Event of Default" under this Note:

(a) failure by Maker to make any payment of Interest on or principal of this Note on or before the twenty-fifth (25th) day of the month first becoming due in accordance with the terms of this Note, without any notice or demand for payment (a "Payment Default");

(b) occurrence of any breach or default (including a Payment Default) by Maker under this Note or any other Transaction Document, and the continuation of any such breach or default for thirty (30) days after written notice of such breach or default is given to Maker by the Noteholders ("Curable Default"); however, if such Curable Default is not reasonably susceptible of cure within thirty (30) days with the exercise of due diligence, then Maker shall have an additional period of time, not to exceed one hundred and twenty (120) days, to complete the cure without such breach or default constituting an Event of Default, provided Maker is diligently and in good faith pursuing a cure; or

(c) dissolution or termination of the existence of Maker, the commencement by Maker of a voluntary case under the federal bankruptcy laws, the entry of a decree or order for relief against Maker in an involuntary case under the federal bankruptcy laws, the appointment or the consent by Maker to the appointment of a receiver, trustee, or custodian of Maker or for Maker, or an assignment for the benefit of creditors by Maker.

Section 8.2. Remedies. Upon any Event of Default under this Note and the expiration of any applicable notice and cure periods:

(a) the entire unpaid principal balance hereof, any accrued but unpaid Interest, late charges, and all other amounts owing under this Note, shall, at the option of Noteholders, without further notice or demand of any kind to Maker or any other person, become immediately due and payable; and

(b) Noteholders shall have and may exercise any and all rights and remedies available at law, by statute, or in equity.

The remedies of the Noteholder, as provided in this Note, shall be cumulative and concurrent and may be exercised singularly, successively, or together, at the sole discretion of the Noteholders, as often as occasion therefor shall arise. No act of omission or commission of the Noteholders, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of any right, remedy, or recourse to collateral, such waiver or release to be effected only through a written document executed by the Noteholders. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of, any subsequent right, remedy, or recourse to collateral as to any subsequent event.

Section 9. Legal Limits. All agreements between Maker and the Noteholders are hereby expressly limited so that in no event whatsoever, whether by reason of deferment or under any agreement or by virtue of acceleration of maturity of the indebtedness evidenced hereby, or otherwise, shall the amount paid or agreed to be paid to the Noteholders, for the loan, use, forbearance or detention of the money to be loaned under this Note, including, but not limited to, any Interest due hereunder, or to compensate the Noteholders for damages to be suffered by reason of a late payment or default under this Note, exceed the maximum permissible under applicable law. If, for any reason, fulfillment of any

provisions of this Note, at the time performance of such provision shall be due, would result in exceeding the limit of validity prescribed by law, the obligations to be fulfilled shall be reduced to the limit of such validity. In the event any payment is made by Maker or received by the Noteholders which exceeds the limit of validity prescribed by law, as amended from time to time, such excess sum shall be credited as a payment of principal under this Note, unless Maker shall notify the Noteholders in writing that Maker elects to have such excess returned to it. This provision shall never be superseded or waived and shall control every other provision of all agreements between Maker and the Noteholders with respect to the loan memorialized by this Note.

Section 10. Transfers. No Noteholder shall have any right to assign, grant participations in, or otherwise transfer all or any part of this Note without the express prior written consent of Maker, which consent may be withheld in the sole discretion of Maker. Without limiting the generality of the preceding sentence, Maker may withhold consent to a proposed transfer unless Maker determines that such transfer is exempt from federal and state securities registration and that the transferee and transferor have satisfied all the other conditions, including by way of illustration, but not limitation, the following conditions, to the satisfaction of Maker:

(a) Such transferor and transferee shall execute an approved form of assignment and prepay all costs to be incurred by Maker in connection with such transfer, including attorneys' fees and costs.

(b) Such transferee shall execute a subscription agreement and purchaser questionnaire to verify that the proposed transferee satisfies the suitability requirements set forth in the "WHO MAY INVEST" section of the Memorandum, to represent that such proposed transferee has read the Memorandum, all subsequent reports of Maker and Maker's financial statements, and is aware of, and assumes the risks of, investing in the Notes as summarized in the "RISK FACTORS" section of the Memorandum.

(c) Maker shall have received, if Maker so requests, an opinion of legal counsel, satisfactory to Maker, in Maker's sole discretion, confirming that the proposed transfer is exempt from securities registration and the assignment is in proper legal form and enforceable against the proposed transferee.

An approved transferee shall take the place of the transferor on the effective date of the transfer, as determined by the Maker and, thereafter, the transferee shall be treated as a Noteholder and owner of the Note transferred for all purposes of this Note and the other Transaction Documents.

Section 11. Notices. All payments of Maker and any notice, report, or writing required or permitted to be given hereunder shall be in writing and shall be delivered in the manner set forth in the Memorandum.

Section 12. Waiver. Maker, for itself and for its successors, transferees, assigns, endorsers, and signers, hereby waives all valuation and appraisement privilege, presentment and demand for payment, protest, dishonor and notice of dishonor, bringing of suit, lack of diligence and delays in collection or enforcement of this Note and notice of the intention to accelerate, the release of any party liable and the release of any security for the debt, the taking of any additional security and any other indulgence or forbearance. This Note may be extended or renewed from time to time without in any way affecting or diminishing Maker's liability under this Note.

Section 13. Headings. The subject headings or titles of paragraphs or sections of this Note are included for purposes of convenience of reference only and shall not affect the meaning, construction, or effect of any of its provisions.

Section 14. Purpose of Loan. Maker hereby represents and warrants that the loan evidenced by this Note is for commercial, business, and investment use only, and Maker acknowledges that the Noteholders are relying upon this representation and warranty in making the loan evidenced by this Note.

Section 15. Governing Law and Severability. This Note is made pursuant to, and shall be construed and governed by, the laws of the State of Idaho, and all rules and regulations promulgated thereunder, excluding the conflicts of laws provisions thereof. If any provision of this Note is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such construction or interpretation shall affect only those provisions so construed or interpreted and shall not affect the remaining provisions of this Note.

Section 16. Jury Trial; Jurisdiction; Venue. Jurisdiction and venue for, and waiver of jury trial in respect of, any action, suit or other proceeding arising out of, under or in connection with this Note or any other Transaction Document or any course of conduct, course of dealing, statements (verbal or written) or action of any party thereto, whether in connection with any Transaction Document or the making of the loan evidenced by this Note, or otherwise are controlled by the appropriate laws of the State of Idaho.

IN WITNESS WHEREOF, this Note has been duly executed and delivered by Maker as of the first date set forth above.

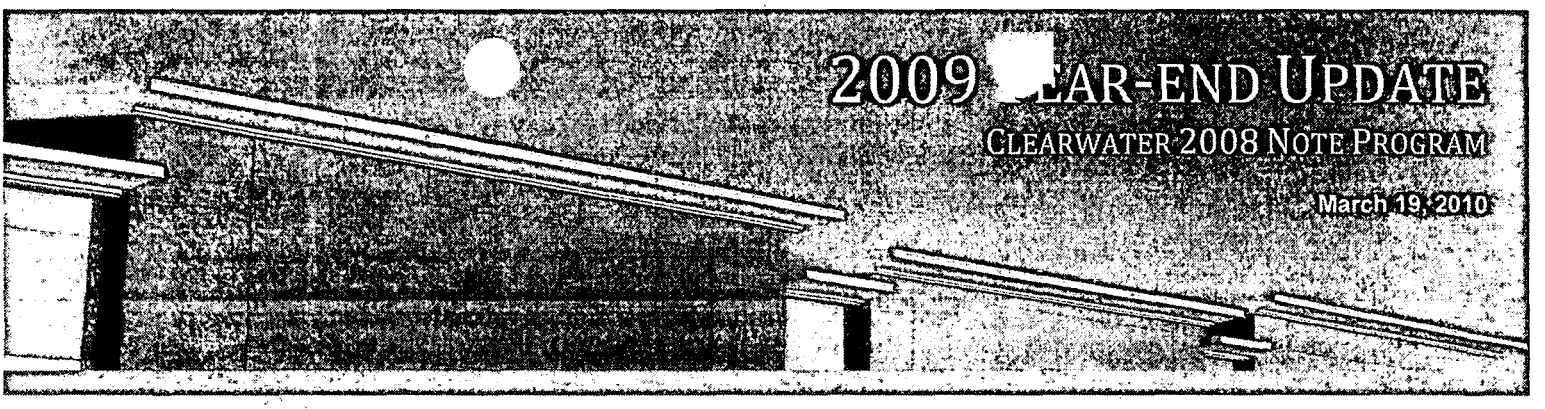
MAKER: **CLEARWATER 2008 NOTE PROGRAM, LLC**

By: Clearwater REI, LLC
Its: Sole Member

By: _____
Bart Cochran, Manager

#2116008 v2 033853.00025

EXHIBIT 9



Dear Investors:

The purpose of this letter is to keep you informed about the status of the 2008 9% Note Program (the "Note Program"). 2009 was a very difficult year for most companies across the globe including Clearwater. The current economic environment is requiring that we be nimble and creative in order to preserve investor capital and drive above average returns. The 2008 Note Program has made adjustments to the take out plan for a few of the loans as a result of the current economic environment. As of 12/31/09, $19,075,410 has been raised from investors and $17,700,000 has been deployed into five portfolio loans that have in excess of $34,000,000 collateralized by First Deeds of Trust. (Please refer to your fourth quarter statement previously sent)

It should be noted that as the financial crisis continues to work itself out, Clearwater is seeing more and more attractive opportunities for the Note Program in arenas such as distressed debt. These opportunities will provide the Note Program with significant profit potential and allow us to continue to make profitable investments with the note proceeds. The discussion below outlines our analysis of each of the five portfolio loans.

Healthcare of Florence

(Non Affiliate loan)

Description: This loan is secured by a First Deed of Trust (FDOT) on a 90,000 SF general hospital and long term care facility. The facility is located in one of the most underserved healthcare markets in the nation.

Original Takeout Plan: Upon completion of the renovations, the loan would be paid off through a refinance with an outside lender.

Update: Renovations are currently ongoing with an estimated completion date in the first half of 2010, 75% completion walkthroughs have been completed. During the renovation process the borrower encountered some cost overruns and delays and it was determined that some additional upgrades should be made for the environmental sustainability and operational efficiencies of the building. Due to these upgrades we have extended the loan amount by $2,000,000 and the term for six months to allow for the additional construction time needed. This extension also provides the loan the ability to be extended for up to five years assuming no default by the borrower. Clearwater feels very comfortable with the extension because of the abundance of collateral the Note Program has with this loan, the appraisal was updated as of 12/31/09 and it shows an "as-is" value of $16,400,000 (49.8% LTV) a "value at completion" of $23,285,000 (35% LTV) and a value as a "going concern" of $39,595,000 (20.6% LTV)

Current Strategy: Our strategy for this loan has not materially changed since origination. Timelines have been pushed back and costs have marginally increased but this is to be expected with a renovation project of this scope and scale. Clearwater, along with the borrower, continue to work with potential bridge lenders (immediate takeout) and permanent lenders (takeout at completion once operating). Due to this project's extremely attractive collateral position, property type (healthcare), and market, we are working with several interested lenders and expect to be refinanced out of this loan before the end of the term and current interest reserve.

If for some unforeseen circumstances the refinance does not become available, the hospital is expected to be able to service the Note Program's loan until the credit markets recover.

Investors should understand that due to conservative underwriting they remain in a secure position even in this extremely difficult economic climate, and that Clearwater is taking all necessary steps to have the loan repaid in a way that continues to allow the Clearwater 2008 Note Program meet its obligation to its investors.

North Seattle Condos

(Affiliate loan)

Description: This loan is secured by a FDOT on 33 condominium units located in Kenmore, WA (Seattle).

Original Takeout Plan: Clearwater originally purchased this loan at a distressed debt auction for a significant discount. The note was non-performing at the time and because of the large amount of equity in the deal ($8,000,000 "as-is" appraised value at closing) Clearwater's business plan was to foreclose on the property and liquidate the assets, secure a work out with the borrower or have the debt repaid.

Update: Even during these extremely difficult economic times units continue to sell, eight units have sold since we acquired the note and the net proceeds are averaging in excess of $200,000 per unit. In addition there are currently four units under contract.

Current Strategy: Clearwater is currently working with its local counsel to remove the property from the bankruptcy court jurisdiction, if successful, Clearwater will be able to proceed with the foreclosure sale as planned.

If able to proceed to foreclosure, there are two possible outcomes. Each of these potential outcomes has varying degrees of profitability for Clearwater; however, they all align with the preservation of the Note Program's capital.

Legends 19 - Townhomes
Raymore, MO
(Non affiliate loan)

Description: This loan is secured by a FDOT on 18 Townhomes in Raymore, MO (Kansas City).

Original Takeout Plan: Primary, refinance through a traditional lender, secondary, foreclosure and liquidation.

Update: Due to the deepening credit crisis the borrower was unable to refinance the property. Clearwater is currently going through the foreclosure process with the sale scheduled for the first week of May pending court approval. Rents are being collected by the court and placed in a lock box; rents will be available to the Note Program once the foreclosure is finalized.

Current Strategy: Clearwater is proceeding with the foreclosure; upon the foreclosure, the Note Program anticipates collecting all back rents and a bond posted by the borrower in the amount of $150,000. Clearwater will continue to collect rents and begin liquidating townhomes. A unit sold for $131,500 in October of 2009 (equates to an extrapolated gross sales proceeds of $2,498,500), the Note Program can expect that this loan should remain profitable due to the continued cash flow and collateral position of this asset.

Coastal Gables - (1) Horizontal Loan; (2) Vertical Loan
Bay St. Louis, MS
(Non affiliate loan)

Description:
(1) Horizontal Loan - This loan is secured by a FDOT on a 143 lot, 286 unit duplex community located in Bay St. Louis, Mississippi. Proceeds will be used for horizontal development.
(2) Vertical Loan - This loan is secured by a FDOT on phase one (consisting of 18 buildings and 36 units) of a 142 building, 284 unit duplex community located in Bay St. Louis, Mississippi which is part of the Biloxi-Gulfport MSA.

Original Takeout Plan:
(1) Horizontal Loan - Lot releases upon commencement of vertical construction.
(2) Vertical Loan - Sales of individual units to investors looking to take advantage of numerous available incentives, and a strong housing market, in the GO Zone.

Update: There have been some delays in the entitlement process; however, all entitlement and permitting should be officially completed shortly (greatly adding to the collateral's value) and construction will commence in earnest. The project is estimated to be 13% complete at this point.

Current Strategy: Clearwater's strategy has not changed materially from when this loan was originated. The entitlement delays are frustrating but do not materially affect the viability of the project or the performance of the Note Program's loan. Clearwater is lending its extensive development and entitlement expertise to this project and assisting in/monitoring the borrower's progress. Clearwater is confident that all delays are soon to be overcome and the project is expected to be back on schedule shortly. Investors remain interested in purchasing finished units and will be purchasing units as soon as they become available.

Current Liquidity - $750,000

In addition to the assets presented above the Note Program has approximately $750,000 in liquid assets that are ready to deploy. The continuing turmoil the real estate and credit markets has presented Clearwater with increasingly attractive investment opportunities into which Clearwater will be able to deploy these funds at very attractive risk adjusted rates of return.

As traditional credit sources have dried up we are finding credit worthy borrowers and assets that are good candidates for Note Program funds. Additionally, as banks experience increased regulatory pressure we are beginning to see an opportunity to purchase distressed debt at levels that are beginning to make sense in today's environment.

Again, Clearwater remains optimistic that the work out strategies presented above will allow the 2008 Note Program to meet its obligations to its investors. In summary, we at Clearwater feel that, in spite of the economic problems, we are on top of each of our investments in the 2008 Note Program and continue to meet all obligations to investors. The collateral coverage of underlying loans and the assets of RE Capital, the guarantor, are being maintained at sufficient levels to allow us to meet our obligations. Please contact our Investor Services Department, if you have any questions.

Sincerely,

Clearwater Real Estate Investments

This document does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum to Accredited Investors. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

EXHIBIT 10

CLEARWATER 2008 NOTE PROGRAM, LLC

INDEPENDENT AUDITOR'S REPORT AND FINANCIAL STATEMENTS

DECEMBER 31, 2009 AND 2008

TABLE OF CONTENTS

INDEPENDENT AUDITOR'S REPORT

To the Members
Clearwater 2008 Note Program, LLC
Eagle, Idaho

We have audited the accompanying balance sheet of Clearwater 2008 Note Program, LLC (the Company) as of December 31, 2009, and the related statements of operations, member's equity (deficit), and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit. The financial statements of Clearwater 2008 Note Program, LLC as of December 31, 2008, were audited by other auditors whose report dated April 6, 2009, expressed an unqualified opinion on those statements.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Clearwater 2008 Note Program, LLC as of December 31, 2009, and the results of its operations and its cash flows for the period then ended in conformity with accounting principles generally accepted in the United States of America.

Moss Adams LLP

Spokane, Washington
June 17, 2010

CLEARWATER 200[illegible]OTE PROGRAM, LLC
BALANCE SHEET

ASSETS

	December 31, 2009	December 31, 2008
CURRENT ASSETS		
Cash	**$ 1,261,964**	$ 4,539,915
Interest receivable	**42,699**	-
Real estate loans receivable	**15,641,771**	-
Current portion of related party receivables	**535,576**	-
Total current assets	**17,482,010**	4,539,915
OTHER ASSETS		
Related party receivables, long-term	**73,799**	-
Deferred loan costs, net	**1,710,569**	513,771
	$ 19,266,378	$ 5,053,686

LIABILITIES AND MEMBER'S DEFICIT

CURRENT LIABILITIES		
Accrued interest payable	**$ 109,157**	$ 62,010
Unearned interest income reserves	**664,155**	-
Current portion of notes payable	**1,907,541**	-
Total current liabilities	**2,680,853**	62,010
LONG-TERM DEBT		
Notes payable, less current portion	**17,405,780**	5,160,427
Related party payable	**-**	41,263
	20,086,633	5,263,700
MEMBER'S DEFICIT		
Membership units	**1,000**	1,000
Membership units subscription receivable	**(1,000)**	(1,000)
Member's deficit	**(820,255)**	(210,014)
	(820,255)	(210,014)
	$ 19,266,378	$ 5,053,686

See accompanying notes.

CLEARWATER 2008 NOTE PROGRAM, LLC
STATEMENT OF OPERATIONS

	Year Ended December 31,	
	2009	2008
REVENUE		
Real estate loan interest	**$ 846,313**	$ -
Other interest	**81,562**	14,561
	927,875	14,561
EXPENSES		
Interest	**1,207,864**	88,454
Marketing	**149,783**	91,748
General and administrative	**180,469**	44,373
	1,538,116	224,575
NET LOSS	**$ (610,241)**	$ (210,014)

See accompanying notes.

000398

CLEARWATER 2008 NOTE PROGRAM, LLC
STATEMENT OF MEMBER'S EQUITY (DEFICIT)

	Membership Units	Membership Units Subscriptions Receivable	Member's Deficit	Total
Balance, January 1, 2008	$ -	$ -	$ -	$ -
Owner contribution	1,000	(1,000)	-	-
Net loss	-	-	(210,014)	(210,014)
Balance, December 31, 2008	1,000	(1,000)	(210,014)	(210,014)
Net loss	-	-	**(610,241)**	**(610,241)**
Balance, December 31, 2009	**$ 1,000**	**$ (1,000)**	**$ (820,255)**	**$ (820,255)**

See accompanying notes

CLEARWATER 2008 NOTE PROGRAM, LLC
STATEMENT OF CASH FLOWS

	Year Ended December 31,	
	2009	2008
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	**$ (610,241)**	$ (210,014)
Adjustments to reconcile net loss to net cash used by operating activities:		
Amortization of deferred loan costs (included as interest expense)	**158,627**	8,735
Reinvested interest expense	**220,369**	17,709
Changes in assets and liabilities		
Interest receivable	**(42,699)**	-
Related party receivables	**(609,375)**	41,263
Deferred loan costs	**(1,355,425)**	-
Accrued interest payable	**47,147**	62,010
Unearned interest income reserves	**664,155**	-
Related party payable	**(41,263)**	-
Net cash used by operating activities	**(1,568,705)**	(80,297)
CASH FLOWS FROM INVESTING ACTIVITIES		
Real estate loans funded	**(14,203,271)**	-
Purchase of real estate loan	**(1,525,000)**	-
Principal payments received on real estate loans receivable	**86,500**	-
Net cash used by investing activities	**(15,641,771)**	-
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from notes payable	**13,932,525**	4,620,212
NET CHANGE IN CASH	**(3,277,951)**	4,539,915
Cash, beginning of year	**4,539,915**	-
Cash, end of year	**$ 1,261,964**	$ 4,539,915
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Interest paid	**$ 781,721**	$ -
NONCASH INVESTING AND FINANCING ACTIVITIES		
Reinvested interest on notes payable	**$ 220,369**	$ 17,709

See accompanying notes.

Note 1 - Organization and Summary of Significant Accounting Policies

Organization:
Clearwater 2008 Note Program, LLC (the Company), formed August 8, 2008, is solely owned by Clearwater REI, LLC. The Company acquires and holds interests in acquisition and development loans, secured by real property, that are undertaken by affiliates of Clearwater REI, LLC, and other borrowers who satisfy the lending criteria established by the Company. The Company's operations are funded by the proceeds from the issuance of notes payable, due at various dates through 2015.

Basis of accounting:
The Company's prepares its financial statements on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (USGAAP).

Use of estimates:
The preparation of financial statements in conformity with USGAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, management evaluates its estimates, including those related to the adequacy of the allowance for loan losses as well as contingencies. Management bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. The valuation estimates for the allowance for loan losses are accounting estimates that can have material affects on the financial statements.

Cash equivalents:
Cash equivalents include any short-term, highly liquid investments with an original maturity of three months or less. The Company has no cash equivalents at December 31, 2009 and 2008.

Real estate loans receivable:
The Company has both the intent and ability to hold real estate loans until maturity and therefore, real estate loans receivable are classified and accounted for as held for investment and carried at face value.

The Company considers a loan impaired when it becomes probable that interest and principal payments are uncollectible according to the contractual terms of the loan agreement, which is generally the earlier of when a principal or interest payment becomes 90 days past due, or when foreclosure proceedings have been initiated. Loans that become 90 days past due or for which foreclosure proceedings have been initiated subsequent to year end are classified as impaired as of year end (see Note 3).

Note 1 - Organization and Summary of Significant Accounting Policies (Continued)

Real estate loans receivable (continued):
The Company measures impaired loans by either taking the present value of expected future cash flows discounted at the loan's effective interest rate or by assessing the loan's observable market price or the fair value of the collateral, if the loan is collateral dependent. As of December 31, 2009 and 2008, all of the Company's loans are collateralized by real property secured by first deed of trust. Management generally obtains a third-party appraisal or other valuation on the underlying collateral for impaired loans to determine the amount of impairment, if any.

The Company only recognizes interest income on loans determined to be impaired when it is probable the outstanding principal and interest will be collected from the borrower. The Company makes such a determination usually after considering third-party valuation of the underlying collateral. Cash receipts for interest payments are allocated to interest income, except when such payments are specifically designated as principal reduction or when management does not believe the Company's investment in the loan is fully recoverable.

Allowance for loan losses:
The Company maintains an allowance for loan losses on real estate loans receivable. Additions to the allowance are based on an assessment of certain factors including, but not limited to, review of collateral values, borrower payment ability, and general economic conditions. Evaluation of the adequacy of the allowance for loan losses is based primarily on management's periodic assessment and risk rating of the loan portfolio. Additional factors considered by management include the consideration of past loan loss experience, trends in past due and nonperforming loans, risk characteristics of the various classifications of loans, the fair value of underlying collateral, and agreements in place to purchase or sell property. While management uses available information to recognize losses on loans, future adjustments to the allowance for loan losses may be necessary based on changes in economic conditions and the impact of such changes on the Company's borrowers.

As described in Note 3, management has determined that no allowance for loan losses is necessary for the year ended December 31, 2009.

Deferred loan costs:
The Company capitalizes direct costs incurred in issuing notes payable and amortizes those costs on a straight-line basis over the related contractual life of the notes. If notes payable are paid in full prior to contractual maturity, then corresponding deferred loan costs are expensed immediately.

Unearned interest income reserves:
Unearned interest income is recorded as revenue by the Company when the corresponding interest charge has been incurred by the borrower, in accordance with each respective real estate loan.

Note 1 - Organization and Summary of Significant Accounting Policies (Continued)

Revenue recognition:
Revenue is recognized on performing loans when interest has been earned according to the terms of the loans. However, interest is no longer recognized when a loan has become 90 days delinquent based on the terms of the loan agreement or when foreclosure proceedings have been initiated, whichever event occurs first. Loan origination fees earned by the Company are deferred and amortized by the effective interest method over the contractual life of the loan, or fully recognized at the time of loan prepayment.

Marketing costs:
The Company expenses marketing costs as they are incurred. Total marketing costs for the years ended December 31, 2009 and 2008, were $149,783 and $91,748, respectively.

Income taxes:
The Company has elected to be taxed as a partnership. Accordingly, under federal and state income tax regulations, any income or loss of the Company flows through to the member and is reported on the member's tax returns. Therefore, no provision for taxes has been recorded in the accompanying financial statements.

As of January 1, 2009, the Company adopted authoritative guidance, which clarifies the accounting for uncertain income tax positions by prescribing a minimum probability threshold that a tax position must meet before a financial statement benefit is recognized. The minimum threshold is defined by the guidance as a tax position that is more likely than not to be sustained upon examination by the applicable taxing authority, including resolution of any related appeals or litigation processes, based on the technical merits of the position. The tax benefit to be recognized is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement.

The Company has evaluated its tax positions and does not believe it has any uncertain tax positions.

Subsequent events:
During 2009, the Company adopted general standards on accounting for and disclosure of events that occur after the balance sheet date but before the financial statements are issued or are available to be issued. These standards are effective for interim or fiscal periods ended after June 15, 2009. The adoption of this guidance did not materially impact the Company's financial statements. In preparing the financial statements, the Company evaluated subsequent events occurring through June 17, 2010, the date these financial statements were available to be issued, and provided disclosures in Note 6.

Reclassifications:
Certain reclassifications were made to the 2008 financial statements to conform to the current year presentation. The reclassifications have no effect on previously reported net results of operations or member's deficit.

Note 2 - Concentrations of Credit Risk

Financial instruments with concentrations of credit and market risk include cash and cash equivalents and real estate loans receivable.

The Company maintains cash deposit accounts in banks, which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts and performs due diligence on the banks where deposits are held to assess their stability.

The loans funded by the Company are fixed rate loans secured by a first deed of trust on land and commercial and residential properties.

The Company has a geographic concentration of real estate loans in the state of Mississippi of approximately 27% as of December 31, 2009. As such, the Company may be adversely affected by periods of economic decline within that geographic area.

Concentration of real estate loan products exist primarily in land and development loans. As such, the Company has a significant product concentration of credit risk that may be adversely affected by periods of economic decline. The following table illustrates the concentration percentages by product type as of December 31, 2009:

	Amount	Percent
Residential development	$ 9,481,771	60.6%
Commercial land	6,160,000	39.4%
	$ 15,641,771	100.0%

All of the Company's real estate loans will require the borrower to make a balloon payment of the principal at maturity. To the extent that a borrower has an obligation to pay a real estate loan in a large lump-sum payment, its ability to satisfy this obligation may be dependent upon its ability to sell the property, refinance, or raise a substantial amount of cash. An increase in interest rates over the rate applicable at the time of origination of the loan or decrease in real estate valuations may have an adverse effect on the borrower's ability to refinance the loan and, accordingly, could cause the Company to incur additional credit losses.

The Company has one real estate loan receivable totaling approximately $3.7 million that is due from an entity related through common ownership.

Note 3 - Real Estate Loans Receivable

The Company had no loans outstanding as of December 31, 2008. Loans outstanding as of December 31, 2009, consist of the following:

Note receivable with Healthcare of Florence, LLC, bearing interest at 14%, with monthly interest only payments. Principal is due in a lump sum payment upon maturity. Collateralized by real property is Florence, Arizona guaranteed by Healthcare of Florence, LLC and due February 6, 2010.	$ 6,160,000
Note receivable with Steelhead Townhomes, LLC, bearing interest at 14%, with monthly interest only payments. Principal is due in a lump sum payment upon maturity. Collateralized by 18 townhome units in Raymore, Missouri, guaranteed personally by the LLC members, and originally due on July 5, 2009.	1,514,074
Note receivable with CREI Seaside LLC, an entity related through common ownership, bearing interest at 14%, with monthly interest only payments. Principal is due in a lump sum payment upon maturity. Collateralized by 41 condo units in Kenmore, Washington, and due on June 24, 2010.	3,742,697
Note receivable with Chapman Road Development, LLC, bearing interest at 14%, with monthly interest only payments. Principal is due in a lump sum payment upon maturity. Collateralized by 18 duplex lots in Bay St. Louis, Mississippi, guaranteed personally by the LLC members, and due on May 31, 2010.	2,700,000
Note receivable with Chapman Road Development, LLC, bearing interest at 14%, with monthly interest only payments. Principal is due in a lump sum payment upon maturity. Collateralized by approximately 35 acres of entitled land in Bay St. Louis, Mississippi, guaranteed personally by the LLC members, and due on June 7, 2010.	1,525,000
	$ 15,641,771

All of the Company's real estate loans receivable outstanding at December 31, 2009, have an original maturity of one year or less. At December 31, 2009, the Company was not committed to fund any additional loan amounts.

Note 3 - Real Estate Loans Receivable (Continued)

Delinquent and impaired loans:
In accordance with its loan accounting policy, one of the Company's loans outstanding amounting to $1,514,074 was considered impaired at December 31, 2009. The Company is in the process of foreclosing on the underlying collateral of the impaired loan. Interest earned on impaired loans for the year ended December 31, 2009, totaled approximately $43,000, all of which has been accrued as a receivable as of the balance sheet date. In accordance with its revenue recognition policy, the Company will continue to accrue interest income on each delinquent loan until the earlier of (1) the loan becoming 90 days past due or (2) a foreclosure is initiated. Accrued interest recorded remains accrued if management determines that either the underlying collateral or discounted future cash flows of the loan support recovery of principal and accrued interest.

The Company sets aside an allowance for loan losses through periodic charges to earnings. While there exists probable asset quality problems in the loan portfolio due to impaired loans, management has not recorded an allowance for impaired loan losses as of December 31, 2009, due to the Company's assessment of the collateral value supporting the amount of loans outstanding.

Note 4 - Notes Payable

Notes payable (the notes) were issued during 2008 and 2009 pursuant to a private placement to offer up to $20,000,000 of secured investment notes at a rate of 9.50% per annum and guaranteed by RE Capital Investments, LLC, an entity related to the Company through common ownership. Commissions were charged for the notes sold and are included in deferred loan costs, which are amortized over the contractual life. Interest is payable monthly, with principal and unpaid accrued interest due at maturity in 2015. Note holders may elect to have interest reinvested and compounded monthly. An option is available to issue up to $40,000,000 in total secured investment notes, at the sole discretion of the Company.

Beginning December 31, 2010, and once annually on that date thereafter, the Company will redeem up to one-tenth of the outstanding principal amount of the notes at par plus accrued but unpaid interest, at the request of note holders upon at least 30 days prior written notice. The Company may also receive redemption requests upon death of a note holder with payment due 180 days after written notice is received. Redemptions, to the extent of the annual limit, will be honored in the order that requests are received. At December 31, 2009, the current portion of notes payable is one-tenth of the outstanding principal amount, or $1,907,411.

On December 31, 2011, the notes are callable, in whole or in part, at the Company's sole option and demand upon ninety days written notice. All notes mature during 2015.

Note 4 - Notes Payable (Continued)

Notes payable consist of the following at December 31, 2009:

	2009	2008
Notes payable	$ 19,075,243	$ 5,142,718
Reinvested interest	238,078	17,709
	19,313,321	5,160,427
Less current portion of notes payable	(1,907,541)	-
	$ 17,405,780	$ 5,160,427

Future minimum principal payments due under the notes payable subsequent to December 31, 2009, are as follows:

2010	$ 1,907,541
2011	1,716,787
2012	1,545,108
2013	1,390,597
2014	1,251,538
Thereafter	11,501,750
	$19,313,321

Note 5 - Related Party Transactions

The Company has entered into an operating agreement with its parent company, Clearwater REI, LLC (the Manager), to handle the day-to-day operations of the Company and perform services and activities relating to the assets and operations of the Company. Under the terms of the agreement, the Manager may be paid reasonable compensation for services, as determined by the Company. During 2009, the Company paid no compensation to the Manager. Expenses incurred by the Manager on behalf of the Company were reimbursed to the Manager.

Note 5 - Related Party Transactions (Continued)

Transactions between the Company and the Manager consist of the following, which make up the balance of the long-term related party receivable:

	2009	2008
Balance at January 1	**$ (41,263)**	$ -
Salary and overhead allocations	**(319,004)**	(136,121)
Professional fees	**(11,250)**	-
Reimbursement of costs to raise capital	**389,649**	113,234
Cash advances to Manager	**86,700**	2,081
Accrued commissions	**(31,033)**	(20,457)
Balance at December 31	**$ 73,799**	$ (41,263)

Under the terms of its loans receivable, the Company retains an interest reserve for payments to be made on behalf of the borrowers to the Company. Clearwater Asset Management, LLC (CRAM), a related party through common ownership, is responsible for holding the interest reserves and processing interest payments to the Company on the loans receivable. CRAM also processes interest payments to the Company's note holders. CRAM recorded the following transactions on behalf of the Company:

	2009	2008
Interest income received	**$ 803,614**	$ -
Interest payments made	**(1,049,237)**	(79,719)

As of December 31, 2009, CRAM held $535,576 of cash on behalf of the Company, which is included in related party receivables. The balance of interest reserves held by CRAM as of December 31, 2009, was $664,155.

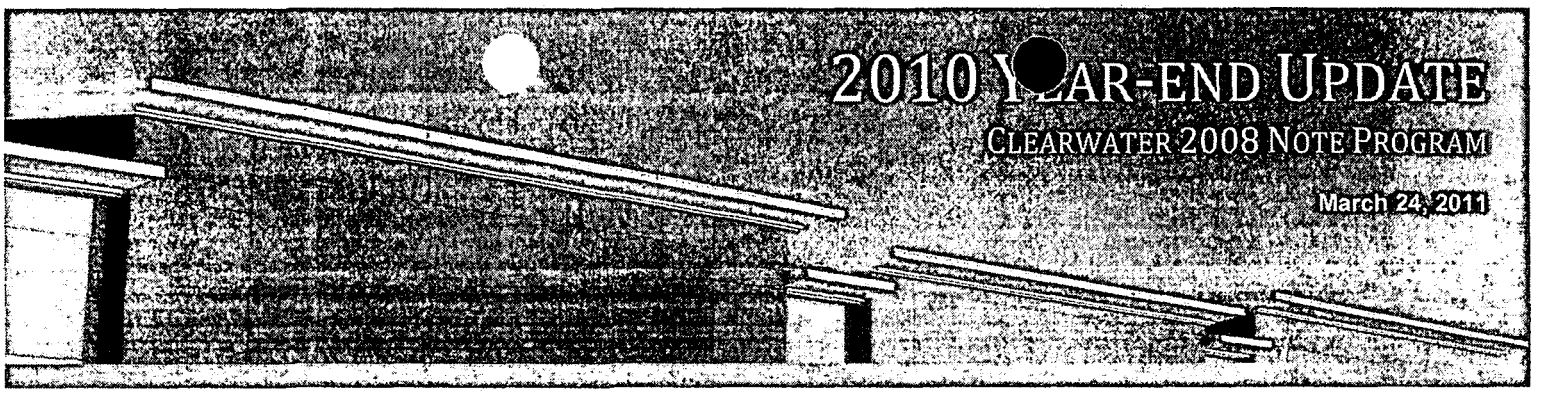
In December 2009, the Company purchased a loan at face value from an entity related through common ownership totaling $1,525,000, secured by a first deed of trust in entitled land located in Mississippi.

Note 6 - Subsequent Events

Subsequent to year end, the Company extended and modified the terms of its loan agreement with Healthcare of Florence, LLC. Under the terms of the extended agreement the amount of the loan increased to ~$9.8M and is due in October 2010.

The Company has two loans outstanding with Chapman Road Development, LLC that matured in May and June 2010. The loans were issued to develop residential land and homes in Mississippi and due to delays in permitting the borrower had not completed development at the time of maturity. The Company is currently in the process of negotiating extensions for the loan agreements.

EXHIBIT 11



Dear Investor:

The purpose of this letter is to keep you informed of the status of the Clearwater 2008 Note Program (the "Note Program"). 2010 was a difficult year for most companies across the globe including the Note Program. The current economic environment is requiring strategic adjustments to preserve investor capital and drive above average returns. The 2008 Note Program has made adjustments to the take out plan for a few of the loans as a result of the current economic environment. As of May 2010, $21,900,000 has been raised from investors and $18,429,697 has been deployed into five portfolio loans which are secured by real property with combined appraised values totaling $28,282,361 (based on the most recent appraisals). These assets are either directly owned by the Note Program or collateralized by first deeds of trust.

As the global financial crisis continues to work itself out, Clearwater is seeing more and more attractive opportunities for the Note Program. The following information outlines our analysis of each of the five portfolio loans.

Healthcare of Florence

(Non Affiliate loan)

Description: This loan is secured by a First Deed of Trust (FDOT) on a 90,000 SF general hospital and long term care facility. The facility is located in one of the most underserved healthcare markets in the nation.

Original Takeout Plan: Upon completion of the renovations, the loan was to be paid off through a refinance with an outside lender.

Update: The renovations are now complete and the hospital has been operational since July, 2010. The loan has matured and the borrowers have been unable to refinance the note due to the difficulties facing the financial markets and delays in the stabilization of the asset. However, the borrower has continued to make interest payments. A forbearance agreement is currently being negotiated with the borrowers. There are parties interested in either purchasing the facility (including a large hospital system operator) or refinancing the real estate.

The appraisal was updated as of 1/19/11 and it shows a "as-is" value of $20,385,000 (48.07% LTV) and a value at "full stabilization" of $21,500,000 (45.58% LTV).

Current Strategy: Although, the loan is in default, our strategy for this loan has not materially changed since origination. The Note Program, along with the borrower, continue to work with potential bridge lenders (immediate takeout) and permanent lenders (takeout upon stabilization). The borrower is working with interested lenders and expects to successfully refinance the project thereby providing a payoff to the Note Program. If for some unforeseen circumstances the refinance does not become available, the hospital is projected to be able to service the Note Program's loan until the credit markets recover.

North Seattle Condos

(Affiliate loan)

Description: This loan is secured by a FDOT on 21 (20 of 41 original units have sold) condominium units located in Kenmore, WA (Seattle).

Original Takeout Plan: The borrower originally purchased this loan at a distressed debt auction for a discount. The note was non-performing at the time and because of the large amount of equity in the deal ($8,000,000 "as-is" appraised value at closing). The Note Program's business plan was to foreclose on the property and liquidate the assets, secure a work out with the borrower or have the debt repaid.

Update: Even during these difficult economic times units continue to sell. Twenty units have sold since we acquired the note, however, the property remains in bankruptcy and proceeds have been used to protect the Note Program's collateral position in the asset.

Current Strategy: The Note Program is currently appealing a bankruptcy court ruling. The Note Program is at the mercy of the bankruptcy court until such time that the court allows collateral to be released or unit sales resume.

Legends 19 - Townhomes
Raymore, MO
(Non Affiliate loan)

Description: Eighteen Townhomes in Raymore, MO (Kansas City) owned by the Note Program through foreclosure.

Original Takeout Plan: Primary, refinance through a traditional lender, secondary, foreclosure and liquidation.

Update: The Note Program has completed the foreclosure on this property and now owns this asset. Sixteen of the 18 units are currently leased at an average rate of $973 per month.

Current Strategy: As noted above the foreclosure of this property is now complete and the Note Program is managing the asset. It is our intention to continue to lease units and collect the positive cash flow in order to meet the Note Program's obligations. As the real estate market recovers we will liquidate units. The Note Program expects this property to continue to realize positive net operating income from this asset.

Coastal Gables - (1) Horizontal Loan; (2) Vertical Loan
Bay St. Louis, MS
(Non Affiliate loan)

Description:
(1) Horizontal Loan - This loan is secured by a FDOT on 124 of 142 residential lots located in Bay St. Louis, Mississippi. Proceeds were used for horizontal development.
(2) Vertical Loan - This loan is secured by a FDOT on phase one (consisting of 18, of 142, lots on which 36 units were to be constructed utilizing the loan proceeds).

Original Takeout Plan:
(1) Horizontal Loan - Lot releases upon commencement of vertical construction.
(2) Vertical Loan - Sales of individual units to investors looking to take advantage of numerous available incentives, and a strong housing market, in the Gulf Opportunity Zone ("GO Zone").

Update: The horizontal construction is substantially complete. Unfortunately, the borrower has lost the government incentives that made this project attractive. The project is significantly behind schedule and due to the lost incentives is no longer economically viable in its current form.

Current Strategy: The Note Program is currently working with the borrower in an attempt to come to an acceptable work out plan. If this effort is unsuccessful then the Note Program will be forced to foreclose and liquidate the asset (142 finished lots).

Again, the Note Program remains optimistic that the work out strategies presented above will allow the Note Program to continue meeting its obligations to its investors. In summary, we at Clearwater believe that in spite of the economic problems, we are actively protecting the assets in the Note Program.

Thank you for your continued patience as we work through these difficult economic times. Please contact our Investor Services Department, if you have any questions.

Sincerely,

Clearwater Real Estate Investments
Toll-free (866) 217-4906
InvestorServices@clearwaterrei.com

EXHIBIT 12

CLEARWATER 2008 NOTE PROGRAM, LLC

REPORT OF INDEPENDENT AUDITORS AND FINANCIAL STATEMENTS

DECEMBER 31, 2010 AND 2009

TABLE OF CONTENTS

MOSS-ADAMS LLP
Certified Public Accountants | Business Consultants

REPORT OF INDEPENDENT AUDITORS

To the Member
Clearwater 2008 Note Program, LLC
Eagle, Idaho

We have audited the accompanying balance sheets of Clearwater 2008 Note Program, LLC (the Company) as of December 31, 2010 and 2009, and the related statements of operations, member's deficit, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Clearwater 2008 Note Program, LLC as of December 31, 2010 and 2009, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

As described in Note 7, during the years ended December 31, 2010 and 2009, the majority of the activity and balances of Clearwater 2008 Note Program, LLC, except notes payable and interest expense, involved related party transactions with entities that were under common Clearwater ownership.

Moss Adams LLP

San Francisco, California
August 19, 2011

Praxity
MEMBER
GLOBAL ALLIANCE OF INDEPENDENT FIRMS

ASSETS

	December 31, 2010	December 31, 2009
CURRENT ASSETS		
Cash and cash equivalents	$ 1,848,846	$ 1,261,964
Interest receivable	150,271	42,699
Real estate loans receivable, net of allowance for losses of $2,311,584 in 2010 and $-0- in 2009	13,567,103	15,641,771
Current portion of related party receivables	212,191	535,576
Total current assets	15,778,411	17,482,010
REAL ESTATE PROPERTY HELD FOR INVESTMENT		
Land	360,000	-
Rental property	1,167,374	-
Accumulated depreciation	(14,150)	-
Total real estate property held for investment	1,513,224	-
OTHER ASSETS		
Related party receivables, long-term	-	73,799
Deferred loan costs, net	1,648,518	1,710,569
	$ 18,940,153	$ 19,266,378

LIABILITIES AND MEMBER'S DEFICIT

CURRENT LIABILITIES		
Accounts payable	$ 14,200	$ -
Accrued interest payable	130,592	109,157
Rental deposits	8,168	-
Unearned interest income reserves	-	664,155
Related party payable	3,544	-
Current portion of notes payable	-	1,907,541
Total current liabilities	156,504	2,680,853
LONG-TERM DEBT		
Notes payable, less current portion	22,487,335	17,405,780
	22,643,839	20,086,633
MEMBER'S DEFICIT		
Membership units	1,000	1,000
Membership units subscription receivable	(1,000)	(1,000)
Member's deficit	(3,703,686)	(820,255)
	(3,703,686)	(820,255)
	$ 18,940,153	$ 19,266,378

See accompanying notes.

	Year Ended December 31,	
	2010	**2009**
REVENUE		
Real estate loan interest	$ 2,116,511	$ 846,313
Other interest	28,138	81,562
Rental income from real estate property held for investment	61,448	-
	2,206,097	927,875
EXPENSES		
Interest	2,300,471	1,207,864
Marketing	-	149,783
General and administrative	291,152	180,469
Rental expenses	25,071	-
Depreciation	14,150	-
Provision for loan losses	2,458,684	-
	5,089,528	1,538,116
NET LOSS	$ (2,883,431)	$ (610,241)

See accompanying notes.

CLEARWATER 2008 NOTE PROGRAM, LLC
STATEMENT OF MEMBER'S DEFICIT

	Units	Units	Deficit	Total
Balance, December 31, 2008	$ 1,000	$ (1,000)	$ (210,014)	$ (210,014)
Net loss	-	-	(610,241)	(610,241)
Balance, December 31, 2009	1,000	(1,000)	(820,255)	(820,255)
Net loss	-	-	(2,883,431)	(2,883,431)
Balance, December 31, 2010	$ 1,000	$ (1,000)	$ (3,703,686)	$ (3,703,686)

See accompanying notes.

	Year Ended December 31, 2010	2009
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	$ (2,883,431)	$ (610,241)
Adjustments to reconcile net loss to net cash from operating activities:		
Amortization of deferred loan costs (included as interest expense)	333,079	158,627
Depreciation	14,150	-
Reinvested interest expense	436,288	220,369
Provision for loan losses	2,458,684	-
Changes in assets and liabilities		
Interest receivable	(306,546)	(42,699)
Related party receivables/payables	400,728	(609,375)
Deferred loan costs	(271,028)	(1,355,425)
Accounts payable	14,200	-
Accrued interest payable	21,435	47,147
Rental deposits	8,168	-
Unearned interest income reserves	(664,155)	664,155
Related party payable	-	(41,263)
Net cash from operating activities	(438,428)	(1,568,705)
CASH FLOWS FROM INVESTING ACTIVITIES		
Real estate loans funded	(3,640,000)	(14,203,271)
Purchase of real estate loan	-	(1,525,000)
Principal payments received on real estate loans receivable	1,927,584	86,500
Net cash from investing activities	(1,712,416)	(15,641,771)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from notes payable	2,828,898	13,932,525
Payments on notes payable	(91,172)	-
Net cash from financing activities	2,737,726	13,932,525
NET CHANGE IN CASH AND CASH EQUIVALENTS	586,882	(3,277,951)
Cash and cash equivalents, beginning of year	1,261,964	4,539,915
Cash and cash equivalents, end of year	$ 1,848,846	$ 1,261,964
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Interest paid	$ 1,509,669	$ 781,721
NONCASH INVESTING AND FINANCING ACTIVITIES		
Reinvested interest on notes payable	$ 436,288	$ 220,369
Foreclosure of loan receivable to real estate property held for investment:		
Real estate property held for investment	$ 1,527,374	$ -
Real estate loan receivable	$ (1,475,500)	$ -
Interest receivable	$ (51,874)	$ -

See accompanying notes.

Note 1 - Organization and Summary of Significant Accounting Policies

Organization:
Clearwater 2008 Note Program, LLC (the Company), formed August 8, 2008, is solely owned by Clearwater REI, LLC (the Manager). The Company acquires and holds interests in acquisition and development loans, secured by real property, that are undertaken by affiliates of Clearwater REI, LLC, and other borrowers who satisfy the lending criteria established by the Company. The Company's operations are funded by the proceeds from the issuance of notes payable, due at various dates through 2015. In 2010, the Company foreclosed on a loan and now owns and operates an 18 unit town-home community located in Raymore, Missouri (see Note 5).

Basis of accounting:
The Company prepares its financial statements on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (USGAAP).

Use of estimates:
The preparation of financial statements in conformity with USGAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, management evaluates its estimates, including those related to the adequacy of the allowance for loan losses and value of real estate held for investment as well as contingencies. Management bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. The valuation estimates for the allowance for loan losses and value of real estate held for investment and the fair values for impaired loans are accounting estimates that can have material affects on the financial statements.

Cash equivalents:
Cash equivalents include any short-term, highly liquid investments with an original maturity of three months or less.

Real estate loans receivable:
The Company has both the intent and ability to hold real estate loans until maturity and therefore, real estate loans receivable are classified and accounted for as held for investment and carried at face value, if not impaired. All loans are originated directly by the Company.

The Company considers a loan impaired when it becomes probable that interest and principal payments are uncollectible according to the contractual terms of the loan agreement, which is generally the earlier of when a principal or interest payment becomes 90 days past due, or when foreclosure proceedings have been initiated. Loans that become 90 days past due or for which foreclosure proceedings have been initiated subsequent to year end are classified as impaired as of year end (see Note 4).

Note 1 - Organization and Summary of Significant Accounting Policies (Continued)

Real estate loans receivable (continued):
The Company measures impaired loans by either taking the present value of expected future cash flows discounted at the loan's effective interest rate or by assessing the loan's observable market price or the fair value of the collateral, if the loan is collateral dependent. As of December 31, 2010 and 2009, all of the Company's loans are collateralized by real property secured by first deeds of trust. Management generally obtains a third-party appraisal or other valuation on the underlying collateral for impaired loans to determine the amount of impairment, if any.

The Company only recognizes interest income on loans determined to be impaired when it is probable the outstanding principal and interest will be collected from the borrower. The Company makes such a determination usually after considering third-party valuation of the underlying collateral. Cash receipts for interest payments are allocated to interest income, except when such payments are specifically designated as principal reduction or when management does not believe the Company's investment in the loan is fully recoverable.

Allowance for loan losses:
The Company maintains an allowance for loan losses on real estate loans receivable. Additions to the allowance are based on an assessment of certain factors including, but not limited to, review of collateral values, borrower payment ability, and general economic conditions. Evaluation of the adequacy of the allowance for loan losses is based primarily on management's periodic assessment and risk rating of the loan portfolio. Additional factors considered by management include the consideration of past loan loss experience, trends in past due and nonperforming loans, risk characteristics of the various classifications of loans, the fair value of underlying collateral, and agreements in place to purchase or sell property. While management uses available information to recognize losses on loans, future adjustments to the allowance for loan losses may be necessary based on changes in economic conditions and the impact of such changes on the Company's borrowers.

The Company maintains a separate allowance for each loan receivable. The allowance for loan losses attributable to each applicable loan is combined to determine the Company's overall allowance, which is included on the balance sheet. At December 31, 2010, the Company has an allowance for losses of $2,311,584. No such allowances were recorded in 2009.

Real estate property held for investment:
Real estate property held for investment is carried at cost, net of accumulated depreciation and net of impairment losses, if any, and depreciated using the straight-line method over the estimated useful lives. Maintenance, repairs, and replacements of fixtures are charged to expense as incurred. The estimated useful life of the rental property is 27.5 years.

Note 1 - Organization and Summary of Significant Accounting Policies (Continued)

Real estate property held for investment (continued):
The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate the carrying amount of the asset may not be recoverable. If the carrying amount of the asset exceeds its estimated undiscounted future net cash flows, before interest, the Company would recognize an impairment loss equal to the difference between its carrying amount and its estimated fair value. If an impairment loss was recognized, the reduced carrying amount of the asset would be accounted for as its new cost. For a depreciable asset, the new cost would be depreciated over the asset's remaining useful life. Generally, fair values are estimated using a discounted cash flow, direct capitalization, or market comparison analysis. The process of evaluating for impairment requires estimates as to future events and conditions, which are subject to varying market and economic factors. Therefore, it is reasonably possible that a change in estimates resulting from judgments as to future events could occur that would affect the recorded amounts of the property. No impairment loss was necessary for the year ended December 31, 2010.

Deferred loan costs:
The Company capitalizes direct costs incurred in issuing notes payable and amortizes those costs on a straight-line basis over the related contractual life of the notes. If notes payable are paid in full prior to contractual maturity, then corresponding deferred loan costs are expensed immediately.

Unearned interest income reserves:
Unearned interest income is recorded as revenue by the Company when the corresponding interest charge has been incurred by the borrower, in accordance with each respective real estate loan.

Revenue recognition:
Revenue is recognized on performing loans when interest has been earned according to the terms of the loans. However, interest is no longer recognized when a loan has become 90 days delinquent based on the terms of the loan agreement or when foreclosure proceedings have been initiated, whichever event occurs first. Loan origination fees earned by the Company are deferred and amortized by the effective interest method over the contractual life of the loan, or fully recognized at the time of loan prepayment.

Rental income consists of leasing town-home units. Rental income is recognized on a straight-line basis over the lives of the related leases when collectability is reasonably assured. The lease terms are generally for periods of one year or less. Differences between the rental income recognized and amount due under the respective lease agreements are determined to be immaterial. Ongoing credit evaluations are performed and no allowance for potential credit losses were provided against the portion of accounts receivable that is estimated to be uncollectible.

Marketing costs:
The Company expenses marketing costs as they are incurred. Total marketing costs for the years ended December 31, 2010 and 2009, were $-0- and $149,783, respectively.

Income taxes:
The Company has elected to be taxed as a partnership. Accordingly, under federal and state income tax regulations, any income or loss of the Company flows through to the member and is reported on the member's tax returns. Therefore, no provision for taxes has been recorded in the accompanying financial statements.

Note 1 - Organization and Summary of Significant Accounting Policies (Continued)

Income taxes (continued):
As of January 1, 2009, the Company adopted authoritative guidance that clarifies the accounting for uncertain income tax positions by prescribing a minimum probability threshold that a tax position must meet before a financial statement benefit is recognized. The minimum threshold is defined by the guidance as a tax position that is more likely than not to be sustained upon examination by the applicable taxing authority, including resolution of any related appeals or litigation processes, based on the technical merits of the position. The tax benefit to be recognized is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement. The Company recognizes interest and penalties related to income tax matters in operating expenses.

The Company has evaluated its tax positions and does not believe it has any uncertain tax positions.

Subsequent events:
Subsequent events are events or transactions that occur after the balance sheet date but before the financial statements are issued. The Company recognizes in the financial statements the effects of all subsequent events that provide additional evidence about conditions that existed at the date of the balance sheet, including the estimates inherent in the process of preparing the financial statements. The Company's financial statements do not recognize subsequent events that provide evidence about conditions that did not exist at the date of the balance sheet, but arose after the balance sheet date and before the financial statements were available to be issued.

The Company has evaluated subsequent events through August 19, 2011, which is the date the financial statements were available to be issued, in accordance with the Company's policy related to disclosures of subsequent events, and has not identified any material events that should be disclosed.

Note 2 - Fair Value Measurements

The Company utilizes fair value measurements to record fair value adjustments to certain assets and liabilities. Current accounting standards clarify the definition of fair value, describe methods generally used to appropriately measure fair value in accordance with USGAAP and expand fair value disclosure requirements. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value hierarchy under current accounting guidance prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The hierarchy is measured in three levels based on the reliability of inputs:

Level 1	Quoted prices for identical instruments in active markets.
Level 2	Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; model-derived valuations in which all significant inputs and significant value drivers are observable in active markets.
Level 3	Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

Note 2 - Fair Value Measurements (Continued)

This hierarchy requires the Company to maximize the use of observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. The Company is required to take into account its own credit risk when measuring the fair value of liabilities. Fair value is best determined based upon quoted market prices. However, in many instances, there are no quoted market prices for various financial instruments. In cases where quoted market prices are not available, fair values are based on estimates using present value and other valuation techniques. Those techniques are significantly affected by assumptions used, including the discount rate, estimates of future cash flows and the realization of collateral values. Accordingly, the fair value estimates may not be realized in an immediate settlement of the instrument.

The following is a description of the valuation methodologies used for instruments measured at fair value on a recurring basis and nonrecurring basis and recognized in the balance sheet, as well as the general classification of such instruments pursuant to the valuation hierarchy.

Impaired loans:
The Company does not record loans at fair value on a recurring basis. However, from time to time, a loan is considered impaired and an allowance for loan losses is established. A loan is considered impaired when, based on current information and events, it is probable the Company will be unable to collect all amounts due according to the contractual terms of the loan agreement or when monthly payments are delinquent greater than 90 days. Once a loan is identified as impaired, management generally measures impairment at fair value when the impaired loans observable market price is available or at the value of the underlying collateral when the impaired loan is collateral dependent. The fair value of the loan's collateral is determined by third party appraisals. Those impaired loans not requiring an allowance represent loans for which the fair value of the collateral or observable market price exceed the recorded investments in such loans. For such impaired loans, they are not measured at fair value. At December 31, 2010 and 2009, substantially all of the impaired loans were evaluated based on the fair value of the collateral.

Impaired loans where an allowance is established based on the fair value of collateral require classification in the fair value hierarchy. When the fair value of the collateral is based on an observable market price or is determined utilizing an income or market valuation approach based on an appraisal conducted by an independent, licensed appraiser using observable market data, the Company records the impaired loan using Level 3 inputs. When management determines the fair value of the collateral is further impaired below the appraised value or there is no observable market data included in a current appraisal, the Company also records the impaired loan using Level 3 inputs.

The following table presents the fair value measurements of assets and liabilities recognized in the accompanying balance sheet measured at fair value on a recurring and nonrecurring basis and the level within the fair value hierarchy in which the fair value measurements fall at December 31, 2010 (there were no fair value measurements at December 31, 2009):

	Level 1	Level 2	Level 3	Total
Nonrecurring				
Impaired loans	$ -	$ -	$ 1,913,416	$ 1,913,416

Note 3 - Concentrations of Credit Risk

Financial instruments with concentrations of credit and market risk include cash and cash equivalents and real estate loans receivable.

The Company maintains cash deposit accounts in banks, which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts and performs due diligence on the banks where deposits are held to assess their stability.

The loans funded by the Company are fixed rate loans secured by a first deed of trust on land and commercial and residential properties.

The Company has a geographic concentration of real estate loans in the state of Mississippi of approximately 27% as of December 31, 2010 and 2009, respectively. As such, the Company may be adversely affected by periods of economic decline within that geographic area.

The Company has a geographic concentration of real estate loans in the state of Arizona of approximately 62% and 39% as of December 31, 2010 and 2009, respectively. As such, the Company may be adversely affected by periods of economic decline within that geographic area.

Concentration of real estate loan products exist primarily in land and development loans. The following table illustrates the concentration percentages by product type as of December 31:

	2010		2009	
	Amount	Percent	Amount	Percent
Residential development	$ 3,767,103	27.8%	$ 9,481,771	60.6%
Commercial land	9,800,000	72.2%	6,160,000	39.4%
	$ 13,567,103	100.0%	$ 15,641,771	100.0%

All of the Company's real estate loans will require the borrower to make a balloon payment of the principal at maturity. To the extent that a borrower has an obligation to pay a real estate loan in a large lump-sum payment, its ability to satisfy this obligation may be dependent upon its ability to sell the property, refinance, or raise a substantial amount of cash. An increase in interest rates over the rate applicable at the time of origination of the loan or decrease in real estate valuations may have an adverse effect on the borrower's ability to refinance the loan and, accordingly, could cause the Company to incur additional credit losses.

The Company has one real estate loan receivable totaling approximately $1,853,687 and $3,742,697 as of December 31, 2010 and 2009, respectively, that is due from an entity related through common ownership.

Note 4 - Real Estate Loans Receivable

Loans outstanding as of December 31 consist of the following:

	2010	2009
Note receivable with Healthcare of Florence, LLC, bearing interest at 14%, with monthly interest-only payments. Principal is due in a lump sum payment upon maturity. Collateralized by real property in Florence, Arizona, guaranteed by Healthcare of Florence, LLC and due October 6, 2010. Loan is in default accruing interest at the effective rate, plus the default rate (14% + 5%) and is due on demand.	$ 9,800,000	$ 6,160,000
Note receivable with Steelhead Townhomes, LLC, bearing interest at 14%, with monthly interest-only payments. Principal is due in a lump sum payment upon maturity. Collateralized by 18 townhome units in Raymore, Missouri, guaranteed personally by the LLC members, and originally due on July 5, 2009. Property was foreclosed on in 2010 and as a result, the Company has obtained the townhomes.	-	1,514,074
Note receivable with CREI Seaside LLC, an entity related through common ownership, bearing interest at 14%, with monthly interest-only payments. Principal is due in a lump sum payment upon maturity. Collateralized by 41 condo units in Kenmore, Washington, and due on June 24, 2010. Loan is in default accruing interest at the effective rate, plus the default rate (14% + 5%) and is due on demand.	1,853,687	3,742,697
Note receivable with Chapman Road Development, LLC, bearing interest at 14%, with monthly interest-only payments. Principal is due in a lump sum payment upon maturity. Collateralized by 18 duplex lots in Bay St. Louis, Mississippi, guaranteed personally by the LLC members, and due on May 31, 2010. Loan is in default accruing interest at the effective rate, plus the default rate (14% + 5%) and is due on demand. During 2010, an allowance of $1,769,328 was recorded.	930,672	2,700,000
Note receivable with Chapman Road Development, LLC, bearing interest at 14%, with monthly interest-only payments. Principal is due in a lump sum payment upon maturity. Collateralized by approximately 35 acres of entitled land in Bay St. Louis, Mississippi, guaranteed personally by the LLC members, and due on June 7, 2010. Loan is in default accruing interest at the effective rate, plus the default rate (14% + 5%) and is due on demand. During 2010, an allowance of $542,256 was recorded.	982,744	1,525,000
	$ 13,567,103	$ 15,641,771

Note 4 - Real Estate Loans Receivable (Continued)

All of the Company's real estate loans receivable outstanding at December 31, 2010, have an original maturity of one year or less. At December 31, 2010, the Company was not committed to fund any additional loan amounts.

Interest receivable and impaired loans:
In accordance with its loan accounting policy, two of the Company's loans outstanding amounting to $1,913,416 were considered impaired at December 31, 2010. At December 31, 2009, one of the Company's loans outstanding amounting to $1,514,074 was considered impaired. In accordance with its revenue recognition policy, the Company no longer accrues interest income on all loans that are 90 days past due. As of December 31, 2010, all outstanding loans with the exception of the loan due from Healthcare of Florence, LLC are 90 days past due. The Company is in the process of foreclosing on the underlying collateral of the impaired loans. Interest earned on impaired loans for the years ended December 31, 2010 and 2009, totaled approximately $-0- and $43,000, respectively, all of which has been accrued as a receivable as of the balance sheet date. Recorded accrued interest remains accrued if management determines that either the underlying collateral or discounted future cash flows of the loan support recovery of principal and accrued interest. During 2010, interest receivable of $147,100 was written off related to allowances for loan losses. This amount is included in the provision for loan losses line item on the statements of operations.

The following table presents a rollforward of the allowance for loan loss:

Balance at January 1, 2010	$ -
Provision for loan losses	2,458,684
Less interest receivable charge-offs from impaired loans	(147,100)
Balance at December 31, 2010	$ 2,311,584

Note 5 - Real Estate Property Held for Investment

On July 27, 2010, the Company foreclosed on an 18 unit townhome community located in Raymore, Missouri, which collateralized the loan receivable from a borrower. The property is recorded at cost as of December 31, 2010, net of accumulated depreciation. The original loan was recorded at $1,562,000. The estimated value of the property at the time of foreclosure, was $1,651,200. As the estimated value of the collateral was greater than the Company's recorded investment in the loan, the real estate was brought onto the Company's accounting records at the loan's recorded investment of $1,527,374. At December 31, 2010, the carrying cost of the real estate is $1,513,224, including accumulated depreciation of $14,150. It is the Company's intent to sell this property, but the expected sale is not probable to occur within the next year.

Note 6 - Notes Payable

Notes payable (the notes) were issued during 2008 and 2009 pursuant to a private placement to offer up to $20,000,000 of secured investment notes at a rate of 9.50% per annum and guaranteed by RE Capital Investments, LLC, an entity related to the Company through common ownership. Commissions were charged for the notes sold and are included in deferred loan costs, which are amortized over the contractual life. Interest is payable monthly, with principal and unpaid accrued interest due at maturity in 2015. Note holders may elect to have interest reinvested and compounded monthly. An option is available to issue up to $40,000,000 in total secured investment notes, at the sole discretion of the Company.

Beginning December 31, 2010, and once annually on that date thereafter, the Company will redeem up to one-tenth of the outstanding principal amount of the notes at par plus accrued but unpaid interest, at the request of note holders upon at least 30 days prior written notice. The Company may also receive redemption requests upon death of a note holder with payment due 180 days after written notice is received. Redemptions, to the extent of the annual limit, will be honored in the order that requests are received.

In 2010, the Company suspended early redemption requests. During 2010, $91,172 in redemptions were honored relating to the death of the note holder.

On December 31, 2011, the notes are callable, in whole or in part, at the Company's sole option and demand upon 90 days written notice. All notes mature during 2015.

Notes payable consist of the following at December 31:

	2010	2009
Notes payable	$ 21,904,141	$ 19,075,243
Reinvested interest	674,366	238,078
Principal payments	(91,172)	-
	22,487,335	19,313,321
Less current portion of notes payable	-	(1,907,541)
	$ 22,487,335	$ 17,405,780

Future minimum principal payments due under the notes payable subsequent to December 31, 2010, are as follows:

2011	$ -
2012	-
2013	-
2014	-
2015	22,487,335
	$ 22,487,335

Note 7 - Related Party Transactions

The Company has entered into an operating agreement with its parent company, Clearwater REI, LLC, to handle the day-to-day operations of the Company and perform services and activities relating to the assets and operations of the Company. Under the terms of the agreement, the Manager may be paid reasonable compensation for services, as determined by the Company. During 2010 and 2009, the Company paid no compensation to the Manager. Expenses incurred by the Manager on behalf of the Company were reimbursed to the Manager. In addition, the Manager received loan origination fees charged to borrowers for and upon origination and extension of loans up to 4% of the loan balance. Loan fees received by the Manager directly from borrowers related to loans outstanding in the Company were $145,600 and $654,588 for the years ended December 31, 2010 and 2009, respectively.

Transactions between the Company and the Manager consist of the following, which make up the balance of the long-term related party payable at December 31, 2010, and receivable at December 31, 2009:

	2010	2009
Balance at January 1	$ 73,799	$ (41,263)
Salary and overhead allocations	(175,555)	(319,004)
Professional fees	(6,591)	(11,250)
Reimbursement of costs to raise capital	(271,028)	389,649
Cash advances to Manager	-	86,700
Commissions paid	375,831	(31,033)
Balance at December 31	$ (3,544)	$ 73,799

Under the terms of its loans receivable, the Company retains an interest reserve for payments to be made on behalf of the borrowers to the Company. Clearwater Asset Management, LLC (CRAM), a related party through common ownership, is responsible for holding the interest reserves and processing interest payments to the Company on the loans receivable. CRAM also processes interest payments to the Company's note holders. CRAM recorded the following transactions on behalf of the Company:

	2010	2009
Interest income received	$ 1,144,377	$ 803,614
Interest payments made	(1,506,332)	(1,049,237)
Miscellaneous income	4,570	4,267
Amounts transferred to CRAM	34,000	776,932

As of December 31, 2010 and 2009, CRAM held $212,191 and $535,576 of cash on behalf of the Company, which is included in related party receivables.

In December 2009, the Company purchased a loan at face value from an entity related through common ownership totaling $1,525,000, secured by a first deed of trust in entitled land located in Mississippi.

Note 8 - Contingency

The Company is a defendant in a lawsuit filed by one of its customers for alleged breach of contract. The suit asks for actual and punitive damages but has not yet specified the amounts sought. The Company believes the suit is completely without merit and intends to vigorously defend its position.

EXHIBIT 13

FROM:

Clearwater Real Estate Investments
1300 E State Street, Ste 103
Eagle, Idaho 83616

Notice to Note Holders

Clearwater 2008 Note Program, LLC

October 26, 2011

****IMPORTANT PLEASE OPEN IMMEDIATELY****

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

Dear Note Holder:

It has been over three years since the Clearwater 2008 Note Program, LLC (the "Note Program") first began offering Notes on August 29, 2008. Over the course of those three years, the Note Program has consistently delivered payments in the aggregate amount of **$3,046,180** to its Note Holders resulting in a 9.0% average annual return on invested principal.

This return has been realized amidst what many deem as the most severe economic downturn our economy has experienced in decades. All the while, the Note Program has sought to maintain its conservative guidelines to preserve value for its Note Holders.

Note Holders can be optimistic of the collateral position of the Note Program today. As shown in the following table, because of conservative underwriting, the loans made by the Note Program continue to be secured by the following collateral.

Description of 1st Deed Collateral	Principal Loan Amount	Most Recent Valuation	Date of Valuation
Healthcare of Florence	$ 9,800,000	$ 21,500,000	1/19/2011
Legends 19 – Townhomes	$ 1,475,500	$ 1,720,000	9/15/2010
(1) Coastal Gables - Horizontal Loan (Infrastructure Development) [1]	$ 1,525,000	$ 1,554,400 [1]	9/21/2011
(2) Coastal Gables - Vertical Loan (Construction - 18 Duplexes)	$ 2,063,977	$ 345,600	9/21/2011
TOTALS	**$ 14,864,477**	**$ 25,120,000**	

[1] Includes additional collateral

DISCLOSURE: The valuations provided above reflect the appraised values at the date referenced above and may differ from the current value.

The Promissory Note made to Trailwalk, LLC which was secured by the first deed of trust on property located in Seattle, WA has paid in full and the deed of trust has been released. Litigation regarding the Promissory Note secured by the second deed of trust continues and is subject to the appellate court decision.

Loan Portfolio Update

The following information provides detailed updates for each of the four portfolio loans and the current strategies being undertaken to preserve and maximize value for the Note Holders.

Healthcare of Florence
Florence, AZ
(Non Affiliate loan)

Description: *This loan is secured by a First Deed of Trust ("FDOT") on a 90,000 SF general hospital and long term care facility. The facility is located in one of the most underserved healthcare markets in the nation.*

Original Takeout Plan: Upon completion of the renovations and stabilization the loan was to be paid off through a refinance with an outside lender.

Update: The loan has matured and the borrowers have been unable to refinance the note due to the difficulties facing the financial markets and delays in the stabilization of the asset. The borrower has made interest payments as they have had the ability to do so; however, as of July 31, 2011 they have fallen behind by $454,955.42. The Note Program is currently in loan work out negotiations with the Borrower.

The appraisal was updated as of 1/19/11 and it shows a "as-is" value of $20,385,000 (48.07% LTV) and a value at "full stabilization" of $21,500,000 (45.58% LTV).
Current Strategy: Healthcare of Florence management expects that when the Operating Rooms become fully operational that the hospital should reach profitability. Delays in reaching stabilization have been caused by receivable collection difficulties, slow operating room ramp up, and delays in obtaining the critical access hospital (CAH) designation. However, the CAH designation was received recently in October. The Note Program is considering a loan workout with the Borrower to allow the hospital the time needed to reach profitability after which the hospital would have to start making full interest payments or repay the loan in full through a refinance. If the borrower is unable to do so within the time allotted for the loan workout the Note Program maybe forced to pursue its rights under the deed of trust.

Legends 19 - Townhomes
Raymore, MO
(Non Affiliate loan)

Description: Eighteen Townhomes in Raymore, MO (Kansas City) owned by the Note Program through foreclosure.

Original Takeout Plan: Primary, refinance through a traditional lender, secondary, foreclosure and liquidation.

Update: The Note Program has completed the foreclosure on this property and now owns this asset. The Note Program has stabilized the asset and occupancy is currently at 94.44% (17 of 18). The average lease rate is $962.65 per month.

Current Strategy: As noted above the foreclosure of this property is now complete and the Note Program is managing the asset. It is our intention to continue to lease units and collect the positive cash flow in order to assist in meeting the Note Program's obligations. As the real estate market recovers we will liquidate units. There is still some outstanding litigation related to the foreclosure that is clouding title and hindering the sale of units and a trial date has been set for 2012.

Coastal Gables - (1) Horizontal Loan; (2) Vertical Loan
Bay St. Louis, MS
(Non Affiliate loan)

Description:
(1) Horizontal Loan - This loan is secured by a FDOT on 113 duplex residential lots located in Bay St. Louis, Mississippi. Proceeds were used for horizontal development.
(2) Vertical Loan - This loan is secured by a FDOT on phase one (consisting of 18 duplex lots).

Original Takeout Plan:
(1) Horizontal Loan - Lot releases upon commencement of vertical construction.
(2) Vertical Loan - Sales of individual units to investors looking to take advantage of numerous available incentives, and a strong housing market, in the Gulf Opportunity Zone ("GO Zone").

Update: The horizontal construction is substantially complete. Unfortunately, the borrower has lost the government incentives that made this project attractive. The project is significantly behind schedule and due to the lost incentives is no longer economically viable in its current form. The Note Program has initiated foreclosure.

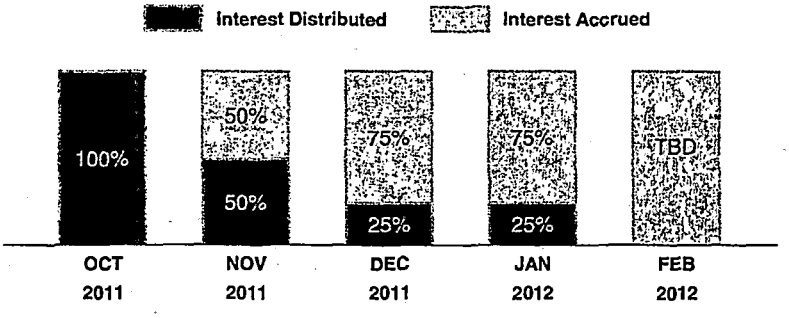
Current Strategy: The Note Program is working diligently to foreclose in order to liquidate the asset.

The Note Program's business plan involves financing real estate acquisition and development projects. Unfortunately, the Note Program has not been immune to the recent downturn. Its borrowers have experienced significant challenges in realizing their exit strategies which has hindered their ability to meet their obligations to the Note Program and in turn the Note Program's ability to meet its obligation to the Note Holders. After careful consideration, the Manager has determined that it's in the best interest of the Note Program's long-term preservation and continuity to discontinue interest payments to the Note Holders for the time being, however the Note Holders' interest will continue to accrue at the same rate.

Accordingly, please be advised that until further notice, all distributions beginning October 15, 2011, will be as follows:

Date	Noteholders (Interest payments)	Noteholders (Reinvesting)
Oct 15, 2011	100% of the monthly interest will be distributed. (No Modification)	Interest will be reinvested as it did prior to this notice.

Nov 15, 2011	50% of the monthly interest will be distributed and 50% will accrue and compound for the benefit of the Noteholders in accordance with Section 3 of the Note dated August 29, 2008.	Interest will be reinvested as it did prior to this notice.
Dec 15, 2011	25% of the monthly interest will be distributed and 75% will accrue and compound for the benefit of the Noteholders in accordance with Section 3 of the Note dated August 29, 2008.	Interest will be reinvested as it did prior to this notice.
Jan 15, 2012	25% of the monthly interest will be distributed and 75% will accrue and compound for the benefit of the Noteholders in accordance with Section 3 of the Note dated August 29, 2008.	Interest will be reinvested as it did prior to this notice.
Feb 15, 2012	The Note Program cash assets will be reassessed at this time to determine if and at what level the program is able to distribute monthly interest payments.	The Note Program cash assets will be reassessed at this time to determine if and at what level the program is able to distribute monthly interest payments.



The chart to the left illustrates the above mentioned interest distribution schedule for Note Holders currently receiving monthly interest distributions.
NOTE: Investors currently participating in the Interest Reinvestment Plan, currently reinvest their interest distributions rather than receive payments each month, accordingly there is NO change to the Interest Reinvestment Plan.

In conclusion, we would like to extend our sincerest gratitude and reaffirm our pledge to you to continue to provide the highest level of service and transparent communication to our valued Note Holders. We want to assure you that our primary focus is to preserve and return your valued principal and we are committed to work diligently in hopes of providing the highest possible return in today's environment. Your patience as we work through these challenges is greatly appreciated.

If you have any questions regarding this correspondence, please send us an email at InvestorServices@ClearwaterREI.com and we will respond in a timely manner.

Sincerely,
Clearwater 2008 Note Program, LLC

EXHIBIT 14

Mark Boling

From: Mark Boling [maboling@earthlink.net]
Sent: Thursday, February 02, 2012 11:42 AM
To: 'Ross Farris'
Subject: Clearwater 2008 Note Program

Mr. Farris,

As a follow-up to today's previous email correspondence, to the extent that no notice of default or breach is required by the Transaction Documents for the Company's failure to timely pay full interest and/or suspension of the principal redemption, I request and demand full payment of my unpaid principal balance and accrued, but unpaid, interest to the date of full payment is made.

If a notice and cure period for the defaults or breaches previously set forth is necessary, I hereby request and demand that the stated defaults or breaches be timely cured. And if not timely cured, immediately thereafter I request and demand full payment of my unpaid principal balance and accrued, but unpaid, interest to the date of full payment is made.

Should any of the aforementioned notices of default or breach sent to you on this date be deemed premature, please consider the two (2) email correspondences sent to you on this date as sufficient notice and demand, if necessary, as of the date when my claim(s) accrues.

Sincerely,

Mark Boling
Cert. #08-470

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Thursday, February 02, 2012 10:29 AM
To: 'Ross Farris'
Subject: Clearwater 2008 Note Program

Mr. Farris,

This email will confirm our telephone conversation today, wherein you informed me that the Company has chosen to accrue my interest payments pursuant to Section 3 of the Note. You will be sending me a copy of Exhibit A to the Note, which I have not previously received and an explanation of why I was not provided a copy of the Note before submitting my Subscription Agreement.

Based on the Company's failure to fully pay interest payments under the Note for November 2011, December 2011 and January 2012, please consider this email correspondence as sufficient written Notice of Default on Interest Payments under the Transaction Documents.

Based on the Company's suspension of liquidation requests, please consider this email correspondence as sufficient Notice of Default on my right to Principal Liquidation under the Transaction Documents.

Sincerely,

Mark Boling
Cert. #08-470

From: Ross Farris [mailto:ross@clearwaterrei.com]
Sent: Wednesday, January 18, 2012 1:06 PM
To: maboling@earthlink.net
Subject: RE: Clearwater 2008 Note Program

Mr. Boling,
Sorry for the confusion. The correspondence you received is not in reference to your lasted correspondence. It is merely a notice for all Noteholders that requested a liquidation in 2011. I have been notified that you can expect a response to your latest inquiry in the near term.

Thank you for your patience.

Kind regards,

Ross Farris
Director of Marketing & Investor Relations
Clearwater Real Estate Investments
(208) 639-4486 office
(866) 217-4906 toll-free
(208) 939-1431 fax

Please consider the environment before printing this email.
This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply mail and destroy all copies and the original message. This material does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Tuesday, January 17, 2012 7:10 PM
To: Ross Farris
Subject: Clearwater 2008 Note Program

Mr. Farris,

I have received a letter dated January 12, 2012 regarding 2011 Liquidation Notification. Said letter does not address the issues presented in my previous email correspondence to Investor Services dated December 20, 2011 below. Please consult with Investor Services and the management of your company and respond in full to my inquiries and request that my subscription be immediately rescinded and the total principal amount of my note be restored.

Thank you.

Sincerely,

Mark Boling
Cert. #08-470

From: Ross Farris [mailto:ross@clearwaterrei.com]
Sent: Wednesday, December 21, 2011 1:45 PM
To: maboling@earthlink.net
Subject: RE: Clearwater 2008 Note Program

Mr. Boling,
We will work on responses to your inquiries and provide responses as soon as we are able. As we are short staffed over the holiday season, we appreciate your patience in advance.

Thank you,

Ross Farris
Director of Marketing & Investor Relations
Clearwater Real Estate Investments
(208) 639-4486 office
(866) 217-4906 toll-free
(208) 939-1431 fax

Please consider the environment before printing this email.
This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply mail and destroy all copies and the original message. This material does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Tuesday, December 20, 2011 11:41 AM
To: InvestorServices
Cc: Ross Farris
Subject: Clearwater 2008 Note Program

To whom it may concern,

I received a letter dated December 14, 2011 ("12/14/11 letter") from someone in "Investor Services." Thank you for your responses to my previous inquiries.

1) As the author of the letter, please provide me with your name and job position with the company, so I may be assured that the content of my inquiries are being provided to, understood and responded to by the management of the Company.

2) Attached to the 12/14/11 letter was a form letter dated March 24, 2011 that purports to provide instructions on how to review 2010 audited financials. I was informed by Laurie Fischer, Controller for Clearwater Investments that the 2010 audited financials for the Clearwater 2008 Note Program, LLC were not however available until August 19, 2011.

3) In the section of the 12/14/11 letter regarding Callability, your response to the inquiry regarding this term was identical to Mr. Farris' previous email response dated 12/1/11 regarding Liquidity, to wit:

> **"Liquidity** - The objective of the 2008 Note Program continues to be the return of the principal investment and interest payments to each Note Holder. The Note Program has a duty to ALL Note Holders to make reasonable business decisions and protect its assets to reach this objective and as such cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders. The Note Program, must continue to restrict its interest payments and hold all liquidation requests until such time that the liquidation requests will not be at parity with the Company's overall indebtedness to

all of its Note Holders. We continue to work diligently, to ease the current financial restrictions and will continue to honor the order in which your liquidation request was received. We appreciate your continued patience and understanding and will let you know as soon as we are able to once again honor the liquidation requests."

My reading of the "Liquidity; Callability" section of the PPM does not reflect any discretion by the Company to prioritize and/or suspend liquidation requests made by the Noteholders. This term was a material consideration that I relied upon in my purchasing a subscription to the note program. The Company's position that it "cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders" is unsupported by the PPM or the supplements thereto. Please identify the specific language in the PPM or supplements that creates the Company's contractual authority to prioritize and/or suspend all liquidation requests made by the Noteholders, which would be in direct contradiction to the expressed and unconditional language set forth in the "Liquidity; Callability" section of the PPM.

If the Company maintains now and at the time of the initial PPM that it can alter or over-ride this expressed term regarding Callability on the basis that it has an obligation to ALL Note holders allowing the Company not to abide by this expressed term, then I would request that my subscription be immediately rescinded and the total principal amount of my note be restored.

4) Pursuant to the Guaranty for the Clearwater 2008 Note Program, attached as Exhibit D to the PPM dated August 8, 2008, RE Capital Investments, LLC "unconditionally guarantees the payment of the original principal amount of the Notes as provided therein." The section entitled "Liquidity: Callability" in the PPM for the Clearwater 2008 Note Program and the 3rd Supplement thereto provides that Notes representing up to 10% of the original principal amount may be called annually by the Noteholders. These are the provisions of the Note. No expressed discretion is given to the Company or Manager in the PPM to prioritize, suspend or refuse such timely payments. If the Company intends not to timely repay a portion of the original principal amount to the Noteholder under the "Liquidity: Callability" section of the PPM, why isn't the Guarantor required to immediately pay such original principal amounts to the Noteholder under the unconditional guaranty?

5) When the initial PPM dated August 8, 2008 was disclosed, a recent balance sheet as of July 31, 2008 by the Guarantor, RE Capital Investments, LLC, was attached. During the subscription period when the 3rd Supplement to the PPM dated January 20, 2010 was disclosed, another recent balance sheet as of December 31, 2009, by the Guarantor, RE Capital Investments, LLC, was attached. In the 3rd Supplement to the PPM, the Company acknowledged that the Guarantor had insufficient net worth under the Guaranty. After that the subscription period has ended and the note program has been funded, approximately two years later with the on-going serious financial condition of the Clearwater 2008 Note Program, the Company and Manager have not been able to secure a current balance sheet from the Guarantor, whose officers are inter-related to the Company and Manager. Please explain how this failure to timely secure a current balance sheet from the Guarantor is not tantamount to gross negligence or intentional malfeasance on the part of the Company and/or the Manager to protect the interests and principal investment amounts of the Noteholders when the need to look to the Guarantor exists to exercise the Callability term by the Noteholders?

Thank you in advance for your continued cooperation in attempting to resolve these issues.

Sincerely,

Mark Boling
Cert. #08-470

From: Ross Farris [mailto:ross@clearwaterrei.com]
Sent: Tuesday, December 13, 2011 12:33 PM
To: maboling@earthlink.net
Subject: RE: Clearwater 2008 Note Program

Mr. Boling,
I just wanted to follow up and let you know that your latest email has been sent to compliance and you can expect a response in the near term. Thank you for your patience.

Kind regards,
Ross Farris

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Wednesday, December 07, 2011 6:52 PM
To: Ross Farris
Subject: Clearwater 2008 Note Program

Mr. Farris,

I reviewed your most recent voicemail message sent to me today requesting that I call you. Notwithstanding the need for you to check with the company's Compliance, and for the sake of clarity, I would prefer that you respond to my questions via this email string. Thank you.

Mark Boling

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Wednesday, December 07, 2011 8:23 AM
To: 'ross@clearwaterrei.com'
Subject: Clearwater 2008 Note Program

Mr. Farris,

I reviewed your voicemail message yesterday evening requesting that I call you. For expediency and clarity, I would prefer you respond to my questions via this email string. Thank you.

Mark Boling

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Thursday, December 01, 2011 4:22 PM
To: 'ross@clearwaterrei.com'
Subject: Clearwater 2008 Note Program

Mr. Farris,

I am in receipt of your email correspondence dated December 1, 2011. Unfortunately, your response did not provide specific information to many of my questions sent to you by email transmission on November 10, 2010. In particular,

Inquiry re: October 26, 2011 – Notice to Note Holders

1) What is the estimated cost of appraisal, by project, for the Healthcare of Florence and Legends 19 projects?
Your response has not specifically addressed this question.
2) While I understand that it would purportedly be costly to obtain appraisals every 60 days, does the Company consider the "Notice to Note Holder" dated October 26, 2011 to be a significant communication on the status of the Clearwater 2008 Note Program that would warrant a current valuation of all significant projects?
If the notice is significant, why wasn't a current appraisal provided as a good faith effort on the part of the Company to inform the Note Holders of the most accurate valuation of the Healthcare of Florence and Legends 19 projects?
If the notice is not considered significant, why was this unexpected interim notice sent to the Noteholders?
Your response has not specifically addressed these questions.
3) Other than costs, did the Company have any other reason in not providing a current valuation for all major projects in this "Notice to Note Holder" communication? If so, what were the reasons?
Your response has not specifically addressed this question.
4) Why are the loan amounts and valuations totaled (and stated **in bold**) as if cross-collateralization agreements existed between the project loans?
For instance, will the security of the Healthcare of Florence project, which value exceeds that project's principal loan amount, secure the Coastal Gables – Vertical Loan, which is extremely under-secured?
Your response has not specifically addressed this question.
If not, are the total of the loan amounts and valuations as a comparison likely to mislead the Noteholders?
5) Since the additional collateral, consisting of 14 acres of land located in Waveland, Mississippi, has an appraised value of $640,000, does that mean that the valuation of the 113 duplex residential lots in Bay St. Louis, MS is $914,400 ($1,554,400 - $640,000) for the Coastal Gables – Horizontal Loan?
6) Is this additional collateral, consisting of 14 acres of land located in Waveland, Mississippi, for the Coastal Gables – Horizontal Loan secured by a FDOT?
What efforts, if any, have been made to foreclose on this additional collateral?
Your response has not specifically addressed these questions.
7) Prior to lending money to the borrower in the Coastal Gables project, what due diligence was performed by the Company to confirm that the government incentives that made the project attractive to the borrower were intact and what conditions needed to exist for the borrower to lose those incentives?
Your response has not specifically addressed this question.

Private Placement Memorandum (Book No. 08Note-A238) ["PPM']:

1) The PPM sets forth on page 24 that "[w]ithin 120 days after the end of each calendar year, the Company will send to each Noteholder of record during the previous year: (a) an audited balance sheet for the Company as of the end of such fiscal year and (b) an audited statement of the Company's earnings for such fiscal year, along with a year-end status report." The audited financial documents for the years ending December 31, 2009 and 2010 from Moss Adams LLP that you attached to your last email showing a date of August 19, 2011 was first provided to me in your email.
Based on your reading of the content of the PPM, would these disclosures be considered timely?
Your response attaches a generic cover letter. Please provide sufficient documentation to establish that (a) an audited balance sheet for the Company as of the end of such fiscal year and (b) an audited statement of the Company's earnings for such fiscal year was sent to me within 120 days after the end of the 2010 and 2011 calendar years.

2) Please provide a copy of t... ast Balance Sheet that reflects RE Cap... Investments, LLC's net worth received by the Company.

What date was this document received by the Company?

Please provide sufficient documentation to establish that the last Balance Sheet for RE Capital Investments, LLC was sent to me in February 2010.

3) Based on the facts that 1) Ronald D. Meyer owns 100% of Terron Investments, Inc., which owns 50% of RE Capital Investments, LLC, and 2) Mr. Meyer is the Chief Development Officer of the Company, wouldn't the Company have a significant and constant inside contact with RE Capital Investments, LLC to timely acquire any necessary financial information that would continually assess the viability of the guaranty?

Are there any overlapping officers and/or directors between the Company and RE Capital Investments, LLC?

If so, please state the names and positions with each business entity.

Your response has not specifically addressed these questions. The 2nd supplement does not fully satisfy the inquiries made.

4) What is reason, if any, given by RE Capital Investments for any delay in the Company obtaining a recent Balance Sheet that reflects RE Capital Investments, LLC's net worth?

Has the credibility of the reason been verified by the Company? How?

Your response has not specifically addressed these questions.

Liquidity – Callibility:

1) Due to the untimely disclosure of the audited financial documents to the Noteholders for the years ending December 31, 2009 and 2010, I must object to the 11/7/11 priority date given to my request for liquidation and request that the notice date be set at May 1, 2010 for the year 2010 and May 1, 2011 for the year 2011 and thereafter, which are the dates that the audited financial documents were required to be disclosed to the Noteholders.
2) My reading of the "Liquidity; Callability" section of the PPM does not reflect any discretion by the Company to prioritize and/or suspend liquidation requests made by the Noteholders. Please identify the specific language in the PPM that creates the Company's contractual authority to prioritize and/or suspend all liquidation requests made by the Noteholders, which would be in direct contradiction to the expressed language set forth in the "Liquidity; Callability" section of the PPM.
Your response has not specifically addressed this question.

Thank you for your kind attention to these matters.

Mark Boling

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Thursday, November 10, 2011 5:50 PM
To: 'Ross Farris'
Subject: Clearwater 2008 Note Program

Mr. Farris,

Thank you for responding to my email and invitation for other questions. Your responses have raised some additional concerns regarding the Clearwater 2008 Note Program.

Inquiry re: October 26, 2011 – Notice to Note Holders

8) What is the estimated cost of appraisal, by project, for the Healthcare of Florence and Legends 19 projects?
9) While I understand that it would purportedly be costly to obtain appraisals every 60 days, does the Company consider the "Notice to Note Holder" dated October 26, 2011 to be a significant communication on the status of the Clearwater 2008 Note Program that would warrant a current valuation of all significant projects?

If the notice is significant, why wasn't a current appraisal provided as a good faith effort on the part of the Company to inform the Note Holders of the most accurate valuation of the Healthcare of Florence and Legends 19 projects?

If the notice is not considered significant, why was this unexpected interim notice sent to the Noteholders?

10) Other than costs, did the Company have any other reason in not providing a current valuation for all major projects in this "Notice to Note Holder" communication? If so, what were the reasons?
11) Why are the loan amounts and valuations totaled (and stated **in bold**) as if cross-collateralization agreements existed between the project loans?

For instance, will the security of the Healthcare of Florence project, which value exceeds that project's principal loan amount, secure the Coastal Gables – Vertical Loan, which is extremely under-secured?

If not, are the total of the loan amounts and valuations as a comparison likely to mislead the Noteholders?

12) Since the additional collateral, consisting of 14 acres of land located in Waveland, Mississippi, has an appraised value of $640,000, does that mean that the valuation of the 113 duplex residential lots in Bay St. Louis, MS is $914,400 ($1,554,400 - $640,000) for the Coastal Gables – Horizontal Loan?
13) Is this additional collateral for the Coastal Gables – Horizontal Loan secured by a FDOT?

What efforts, if any, have been made to foreclose on this additional collateral?

14) Prior to lending money to the borrower in the Coastal Gables project, what due diligence was performed by the Company to confirm that the government incentives that made the project attractive to the borrower were intact and what conditions needed to exist for the borrower to lose those incentives?

Private Placement Memorandum (Book No. 08Note-A238) ["PPM']:

5) The PPM sets forth on page 24 that "[w]ithin 120 days after the end of each calendar year, the Company will send to each Noteholder of record during the previous year: (a) an audited balance sheet for the Company as of the end of such fiscal year and (b) an audited statement of the Company's earnings for such fiscal year, along with a year-end status report." The audited financial documents for the years ending December 31, 2009 and 2010 from Moss Adams LLP that you attached to your last email showing a date of August 19, 2011 was first provided to me in your email.

Based on your reading of the content of the PPM, would these disclosures be considered timely? If so, why?

6) Please provide a copy of the last Balance Sheet that reflects RE Capital Investments, LLC's net worth received by the Company.

What date was this document received by the Company?

7) Based on the facts that 1) Ronald D. Meyer owns 100% of Terron Investments, Inc., which owns 50% of RE Capital Investments, LLC, and 2) Mr. Meyer is the Chief Development Officer of the Company, wouldn't the Company have a significant and constant inside contact with RE Capital Investments, LLC to timely acquire any necessary financial information that would continually assess the viability of the guaranty?

Are there any overlapping officers and/or directors between the Company and RE Capital Investments, LLC?

If so, please state the names and positions with each business entity.

8) What is reason, if any, given by RE Capital Investments for any delay in the Company obtaining a recent Balance Sheet that reflects RE Capital Investments, LLC's net worth?
Has the credibility of the reason been verified by the Company? How?

Liquidity – Callibility:

3) Due to the untimely disclosure of the audited financial documents to the Noteholders for the years ending December 31, 2009 and 2010, I must object to the 11/7/11 priority date given to my request for liquidation and request that the notice date be set at May 1, 2010 for the year 2010 and May 1, 2011 for the year 2011 and thereafter, which are the dates that the audited financial documents were required to be disclosed to the Noteholders.
4) My reading of the "Liquidity; Callability" section of the PPM does not reflect any discretion by the Company to prioritize and/or suspend liquidation requests made by the Noteholders. Please identify the specific language in the PPM that creates the Company's contractual authority to prioritize and/or suspend all liquidation requests made by the Noteholders, which would be in direct contradiction to the expressed language set forth in the "Liquidity; Callability" section of the PPM.

Thank you for your kind attention to these matters.

Mark Boling

From: Ross Farris [mailto:ross@clearwaterrei.com]
Sent: Thursday, November 10, 2011 2:15 PM
To: maboling@earthlink.net
Subject: FW: Clearwater 2008 Note Program

Sorry about that, I forgot to add the attachments... see attached hereto.

Thanks,

Ross Farris
Director of Marketing & Investor Relations
Clearwater Real Estate Investments
(208) 639-4486 office
(866) 217-4906 toll-free
(208) 939-1431 fax

Please consider the environment before printing this email.
This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply mail and destroy all copies and the original message. This material does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

From: Ross Farris
Sent: Thursday, November 10, 2011 3:10 PM
To: 'maboling@earthlink.net'
Subject: RE: Clearwater 2008 Note Program

Dear Mr. Boling
Thank you for you email. We apologize for the somewhat delayed response. We have been dealing with a high volume of inquiries and have provided responses to your questions below in blue.

Inquiry re: October 26, 2011 – N...e to Note Holders

1) Please provide me with an explanation of why a valuation for the Healthcare of Florence has not been updated to reflect a current (last 60 day) valuation and what efforts are being made to do so. A: It would be very cost prohibitive to pay for appraisals every 60 days on every asset within the program.

2) Please provide me with an explanation of why a valuation for the Legends 19 – Townhomes has not been updated to reflect a current (last 60 day) valuation and what efforts are being made to do so. A: See previous response.

3) Please provide me with the details and amounts of the "additional collateral" that exists for the Coastal Gables – Horizontal Loan. A: The additional collateral includes 14 acres of land located in Waveland, Mississippi. Based on the most recent appraisal dated 9/21/11 the property appraises at $640,000.

4) Please provide me, according to each government incentive, a) the details of the incentive, b) when the borrower lost the government incentive and c) why the borrower lost the government incentive that made the Coastal Gables project attractive. A: Once the asset is foreclosed upon by the 2008 Note Program, Clearwater will be able to investigate the loss of government incentives by the borrower with the Mississippi Development Authority to determine the details of why and how this occurred. What we do know is that the government incentive was known as the SRAP Program (Small Rental Assistance Program) and was administered by the Mississippi Development Authority. This SRAP incentive was an approximately $30,000 per unit 5 year forgivable loan.

5) Please provide me with the percentage of completion for the Coastal Gables project as of October 26, 2011. A: The infrastructure of the project (no buildings) is substantially complete with the exception of the final layer of asphalt on the roads.

PPM:

1) Please provide me with the Company's 2010 Annual Report. A: Attached is the 2010 Year-end update that was previously mailed to you as well as the 2010 Audited Financials that are available via the investor online portal.

2) Please provide me with a recent Balance Sheet that reflects RE Capital Investments, LLC's net worth (difference between total assets and total liabilities). A: Clearwater has made multiple attempts to get updated financials from RE Capital and we have received word that we should have updated financials no later than year end 2011.

Liquidity – Callibility:

PLEASE TAKE NOTICE that I hereby seek to call 10% of the original principal amount of my Certificate #08-470 pursuant to the Private Placement Memorandum (Book No. 08Note-A238), plus all additional amounts due and owing under the corresponding Note. This email correspondence shall constitute sufficient written notice of callibility for the calendar year 2010 and each consecutive calendar year thereafter until the principal amount of said certificate is paid in full. A: Your request to liquidate your note is acknowledged and has been recorded with a request date of 11/7/2011. You will be added to the liquidation request list with your request date serving as your priority date. However, all liquidation requests have been suspended until such time that the liquidation requests will not be at parity with the Company's overall indebtedness to all of its Note Holders. The objective of the 2008 Note Program continues to be the return of the principal investment and interest payments to each investor. The Note Program has a duty to all investors to make reasonable business decisions and protect its assets to reach this objective and as such cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders.

Thank you.

Mark Boling

Please let us know if you have any other questions.

Sincerely,

Ross Farris
Director of Marketing & Investor Relations
Clearwater Real Estate Investments
(208) 639-4486 office
(866) 217-4906 toll-free
(208) 939-1431 fax

Please consider the environment before printing this email.
This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply mail and destroy all copies and the original message. This material does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

From: Mark Boling [mailto:maboling@earthlink.net]
Sent: Sunday, November 06, 2011 3:10 PM
To: InvestorServices
Subject: Clearwater 2008 Note Program

Inquiry re: October 26, 2011 – Notice to Note Holders

1) Please provide me with an explanation of why a valuation for the Healthcare of Florence has not been updated to reflect a current (last 60 day) valuation and what efforts are being made to do so.

2) Please provide me with an explanation of why a valuation for the Legends 19 – Townhomes has not been updated to reflect a current (last 60 day) valuation and what efforts are being made to do so.

3) Please provide me with the details and amounts of the "additional collateral" that exists for the Coastal Gables – Horizontal Loan.

4) Please provide me, according to each government incentive, a) the details of the incentive, b) when the borrower lost the government incentive and c) why the borrower lost the government incentive that made the Coastal Gables project attractive.

5) Please provide me with the percentage of completion for the Coastal Gables project as of October 26, 2011.

PPM:

1) Please provide me with the Company's 2010 Annual Report.

2) Please provide me with a recent Balance Sheet that reflects RE Capital Investments, LLC's net worth (difference between total assets and total liabilities).

Liquidity – Callibility:

PLEASE TAKE NOTICE that I hereby seek to call 10% of the original principal amount of my Certificate #08-470 pursuant to the Private Placement Memorandum (Book No. 08Note-A238), plus all additional amounts

due and owing under the correspo...ing Note. This email correspondence ...l constitute sufficient written notice of callibility for the calendar year 2010 and each consecutive calendar year thereafter until the principal amount of said certificate is paid in full.

Thank you.

Mark Boling

Cert. #08-470

!SIG:4f162a0676755568219935!

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

December 14, 2011

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

Dear Mr. Boling,

We have received your emails dated November 6, November 10, December 1, and December 7, 2011, which outline your numerous follow up questions to the October 26, 2011 Notice to Noteholders. We have attempted to contact you by phone and are including your broker dealer and registered representative of your questions so they are informed of your inquiries and can provide additional assistance to you in answering many of your questions.

I. DEBT INVESTMENT

On February 27, 2010, you purchased a debt investment through Marna Hart, your registered representative, in the amount of $50,000.00 and became one of the Noteholders of that certain Promissory Note by and between the Noteholders and Clearwater 2008 Note Program, LLC (the "Company") dated August 29, 2008.

As part of this investment you received a Private Placement Memorandum dated August 29, 2008 ("PPM"). As you have noticed, this PPM discusses the offering in great detail, please contact your registered representative regarding your investment questions and they should also be available to answer many of your questions.

II. RESPONSES TO YOUR EMAIL DATED NOVEMBER 10, 2011.

The responses below are numbered in accordance with your email dated November 10, 2011.

Response to Question 1. The cost of appraisals vary and the Manager has no way of knowing the costs of appraisals until a bid is received from the appraiser.

Response to Question 2. The information contained in the notice to Noteholders was the most recent information available to the Manager. In honoring our continued commitment to the Noteholders we will continue to provide you with updated information regarding the collateral as it becomes available.

Response to Question 3. One of the items discussed in the PPM is that all decision regarding management of the Company's affairs are to be made exclusively by the Manager and not by the Noteholders. As such information regarding how much to pay for appraisals and when they are ordered are determined exclusively by the Manager.

Additionally, appraisals can only be relied upon by the "authorized user." Clearwater 2008 Note Program, LLC is the authorized user of the appraisals and the Noteholders may not rely on the information contained in the appraisals. However, Noteholder's can be assured that the Company will continue to define loan to value ratios with MAI appraisals and/or broker's opinions.

Response to Question 4. The Company's loans were for various projects and were made to different borrowers; therefore the loans are not cross collateralized. The totaled amounts in the Notice that your email were to simply show the total appraised value of collateral.

Response to Question 5. According to the most recent appraisal, the 113 residential duplex lots in Bay St., Louis, Mississippi are cumulative valued of $1,260,000 and the additional 14 acres of land located in Waveland, Mississippi has an appraised value of $640,000.

Response to Question 6. All of the Company's loans are collateralized by a first position mortgage or first deed of trust, including the additional collateral in Waveland, Mississippi. The foreclosure of the additional collateral in Waveland,

Mississippi was completed on November 10, 2011, with the exception of 2 lots, which are currently protected by a bankruptcy stay. The Company has retained counsel to request relief from the bankruptcy stay so that the foreclosure of the remaining 2 lots can be completed.

Response to Question 7. The Company's affairs are to be made exclusively by the Manager and not by the Noteholders, including the due diligence of projects. The Noteholders can be assured that the required documentation was obtained by the Investment Committee.

Private Placement Memorandum Questions.

Response to Question 1. The Company timely provided you with the 2010 year-end report on March 24, 2010. The enclosed cover letter that accompanied this report notified you of the availability of the audited financials via the online portal or by request as of May 1, 2010. We have enclosed a copy of the letter that was mailed to you and the address that the letter was mailed to. Additionally, your registered representative would have also received a copy of the year-end report.

Response to Question 2. The balance sheet for RE Capital Investments, LLC was provided to you and was included in the Private Placement Memorandum ("PPM") kit that was provided to you by your registered representative prior to your subscription. It was included as Supplement No. 3 which included the 2009 balance sheet for RE Capital Investments, LLC. Our records indicate your PPM kit number to be 08Note-A238 which would have included the 3rd Supplement to the PPM.

Response to Question 3. The Company provided the requested information in the PPM beginning on page 16 and in the Second Supplement dated June 30, 2009.

Response to Question 4. The Company has requested a final 2010 balance sheet from RE Capital.

Response to Question Regarding Callability. The objective of the 2008 Note Program continues to be the return of the principal investment and interest payments to each Note Holder. The Note Program has a duty to ALL Note Holders to make reasonable business decisions and protect its assets to reach this objective and as such cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders. The Note Program, must continue to restrict its interest payments and hold all liquidation requests until such time that the liquidation requests will not be at parity with the Company's overall indebtedness to all of its Note Holders. We continue to work diligently, to ease the current financial restrictions and will continue to honor the order in which your liquidation request was received. We appreciate your continued patience and understanding and will let you know as soon as we are able to once again honor the liquidation requests.

We will continue to answer any questions that you may have, and suggest that you also contact your registered representative, Marna Hart who can be reached at (949) 859-7127 and can serve as an additional source for many of your questions regarding your investment.

Sincerely,

Clearwater 2008 Note Program, LLC
(866) 217-4906
InvestorServices@Clearwaterrei.com

Cc: Marna Hart (Independent Financial Group)

Enclosure

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

March 24, 2011

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

RE: 2010 Year-End Update
Clearwater 2008 Note Program

Dear Valued Investor,

Enclosed, please find the 2010 Year-End Update for the Clearwater 2008 Note Program.

Pursuant to the Private Placement Memorandum, the 2010 audited financials will be completed within 120 days of year's end. Beginning May 1st, Noteholders may access the 2010 audited financials by one of three methods:

1. Online	2. Email	3. Regular Mail
Login to our online Investor Portal: 1) Go to: **www.ClearwaterREI.com** 2) Click on "Investors" 3) Follow online instructions (A recent Quarterly Statement may be needed)	Email your request to: **InvestorServices@ClearwaterREI.com** (Please include your Certificate Number)	Mail your request to: **1300 E State Street** **Suite 103** **Eagle, Idaho 83616** (Please include your Certificate Number)

Also, as a reminder, 1099-INT's were mailed in January. If you invested in the Clearwater 2008 Note Program through a qualified plan (i.e. IRA, 401(k), SEP etc...), you should NOT have received a 1099-INT. However, if you have not received a 1099-INT and did not invest through a qualified plan, please contact us and we will gladly send you a copy immediately.

If you have any questions please contact us toll-free at (866) 217-4906 or by email at InvestorServices@clearwaterrei.com.

Thank you for choosing Clearwater and we look forward to serving you in 2011.

Sincerely,

Investor Services
Clearwater Real Estate Investments
(866) 217-4906 toll-free
InvestorServices@clearwaterrei.com

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

January 25, 2012

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

Dear Mr. Boling,

We have received your latest email dated 12/20/2011. We have again notified your broker dealer and registered representative of your questions so that they can be of further assistance to you in answering many of your questions. Please find the following additional information in response to your latest email.

Audited Financial Statement
The Audited Financials were provided as soon as they were made available by the third party accounting firm, Moss Adams. The time it takes the third party accounting firm is beyond the control of the Note Program.

Liquidity
The objective of the 2008 Note Program, LLC continues to be the return the principal investment and interest payments to each investor. The Note Program has a duty to all investors to make reasonable business decisions and protect its assets to reach this objective and as such cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders.

The 2008 Note Program, must continue to restrict its interest payments and hold all liquidation requests until such time that the liquidation requests will not be at parity with the Company's overall indebtedness to all of its Note Holders.

We continue to work diligently, to ease the current financial restrictions and will continue to honor the order in which your liquidation request was received. We appreciate your continued patience and understanding and will let you know as soon as we are able to once again honor the liquidation requests.

RE Capital
We have been in contact with RE Capital and are hopeful of receiving correspondence from them in the next 30 days.

Sincerely,

Clearwater 2008 Note Program, LLC
(866) 217-4906
InvestorServices@Clearwaterrei.com

Cc: Marna Hart (Independent Financial Group)

EXHIBIT 15

Mark Boling

From:	Ross Farris [ross@clearwaterrei.com]
Sent:	Thursday, December 01, 2011 2:57 PM
To:	maboling@earthlink.net
Cc:	mhart@marnahart.com
Subject:	Clearwater 2008 Note Program
Attachments:	Cover Ltr_2010 Year End Update_08 NP.PDF; 3rd Supplement_Clearwater 2008 Note Program.pdf; Clearwater 2008 Note Program 2nd Supplement dated June 30, 2009.pdf

Dear Mr. Boling,

We are in receipt of your email dated November 10, 2011 and provide you with the following responses to your questions.

Appraisals - The investor notices you have received to date contain the most up to date appraised values that Clearwater 2008 Note Program, LLC ("CREI") has. As new appraisals are received CREI will continue to update the investors.

Coastal Gables - CREI was the successful bidder at the foreclosure sale and is now the owner of the Costal Gables real property, excluding Lots 5 and 6 which are currently under the protection of a bankruptcy stay. CREI completed commercially reasonable due diligence on the Coastal Gables property and is in the process of pursuing any additional recourse it may have against the borrower.

Bay St. Louis, Mississippi - The most recent Bay St. Louis, Mississippi property appraisal indicates that the 131 residential duplex lots are valued at $9,600 per lot and the 14 acres of the Waveland, Mississippi property was valued at $640,000.

Year End Reports - Our records indicate that CREI mailed the 2010 year end status report to you on March 24, 2010 and that you were also notified in March of 2010 that the audited financials were available to you on May 1, 2010, through the investors' online portal or via request. A copy of this notice is attached. Please let us know if we need to update your contact information so that we can ensure that you are receiving updates at your most recent address.

RE Capital Investments, LLC (Guarantor) - Attached is the 3rd supplement to the PPM that was mailed to you in the first week of Feb 2010 and was received by Clearwater a couple weeks prior to it being mailed to the Noteholders which provides the financial information for the Guarantor. CREI continues to request the final 2010 financial statement from RE Capital and will make it available upon receipt. Also, the attached 2nd supplement previously provided to you provides information regarding officers of the Company and RE Capital Investments.

Liquidity - The objective of the 2008 Note Program continues to be the return of the principal investment and interest payments to each Note Holder. The Note Program has a duty to ALL Note Holders to make reasonable business decisions and protect its assets to reach this objective and as such cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders. The Note Program, must continue to restrict its interest payments and hold all liquidation requests until such time that the liquidation requests will not be at parity with the Company's overall indebtedness to all of its Note Holders. We continue to work diligently, to ease the current financial restrictions and will continue to honor the order in which your liquidation request was received. We appreciate your continued patience and understanding and will let you know as soon as we are able to once again honor the liquidation requests.

We have Cc'd your registered representative Marna Hart to this email as another valuable resource to you to answer questions you may have regarding the Note Program. As always your questions are welcomed and we hope this response has been beneficial to you.

Kind regards,

Ross Farris
Director of Marketing & Investor Relations

Clearwater Real Estate Investments
(208) 639-4486 office
(866) 217-4906 toll-free
(208) 939-1431 fax

Please consider the environment before printing this email.

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply mail and destroy all copies and the original message. This material does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

THIRD SUPPLEMENT TO

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

CLEARWATER 2008 NOTE PROGRAM, LLC
$20,000,000 9.0% Notes
(Subject to increase to $40,000,000)

Minimum Investment: $50,000
Minimum Offering Amount: $1,000,000
Maximum Offering Amount: $20,000,000 (Subject to increase to $40,000,000)

Dated: January 20, 2010

This Third Supplement (the "Third Supplement") is designed to update, through January 20, 2010, the information previously provided in the Confidential Private Placement Memorandum dated August 29, 2008 (the "Memorandum"), which described the Offering by Clearwater 2008 Note Program, LLC (the "Company") of up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015, subject to increase to $40,000,000, the First Supplement to the Memorandum dated October 3, 2008 (the "First Supplement"), and the Second Supplement to the Memorandum dated June 16, 2009 (the "Second Supplement") (as so supplemented, with all Exhibits to the Memorandum, the First Supplement and the Second Supplement, the "Offering Memorandum"). Capitalized terms used herein without definition shall have the meaning ascribed to them in the Offering Memorandum.

This Third Supplement is being furnished for your information on a confidential basis so that you may consider an investment in the Notes described in the Offering Memorandum and herein and should be read together with the Offering Memorandum. This Third Supplement is not to be reproduced or used for any other purpose. No person has been authorized to make any statement concerning the Offering other than as set forth in the Offering Memorandum and herein, and any such statement, if made, should not be relied upon. The Notes will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), or any other securities laws. Notes will be offered for investment purposes only pursuant to exemptions from the registration provisions provided under Regulation D of the Securities Act. There will be no public market for the Notes. There are significant risks associated with the Offering. See the Section entitled "Risk Factors" in the Offering Memorandum, as supplemented by this Third Supplement.

The Offering Memorandum, as supplemented by this Third Supplement, is not an offer to sell, or a solicitation of an offer to purchase Notes, and no Notes shall be offered or sold to any person in any jurisdiction in which such offer, solicitation, purchase or sale would be unlawful under the securities laws of such jurisdiction. The Offering Memorandum, as supplemented by this Third Supplement, has not been filed with the United States Securities and Exchange Commission ("SEC"), any securities administrator under state securities laws or any other governmental or self-regulatory authority. None of the SEC, any state securities administrators or governmental or self-regulatory authorities has passed on the merits of the Offering or the adequacy of the Offering Memorandum as supplemented by this Third Supplement. Any representation to the contrary is unlawful.

This Third Supplement describes updated information and should be read in its entirety by each investor.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

OFFERING MEMORANDUM

The following information described in the Offering Memorandum is hereby updated, modified and supplemented as follows:

(a) The Manager of the Company has elected to extend the Offering Termination Date to December 31, 2010, and in connection with this extension, is increasing the Maximum Offering Amount of the Notes to $21,900,000.

(b) The Balance Sheet of RE Capital Investments, LLC (the "Guarantor") as of December 31, 2009 is attached to this Third Supplement as Exhibit A. Although the Guarantor's net worth of approximately $53.4 million is lower than the net worth of $54 million it has covenanted to maintain under the Guaranty based on a Maximum Offering Amount of $20,000,000, in the event that the increased Maximum Offering Amount of $21,900,000 is attained, the Guarantor's net worth does provide a principal coverage ratio of: (a) 1.2x, if a portion of the Guarantor's net worth is reserved to provide 1.5x coverage over principal amounts outstanding under the notes issued by Clearwater 2007 Note Program, LLC (the "2007 Notes Program") (accounting for liquidations of $2,000,000 in principal amount of notes issued by the 2007 Notes Program as of December 31, 2009, with $18,000,000 remaining outstanding), and (b) 2.44x, if this reserve is not made (the Guarantor is not required to make this reserve).

(c) As of the date of this Third Supplement, the Company has added a fourth loan and a fifth loan to its portfolio using proceeds of the Offering. Certain of the terms of those loans are as follows:

Property:	Coastal Gables Horizontal Development	Coastal Gables Vertical Development
Location:	Bay St. Louis, MS	Bay St. Louis, MS
Loan Amount:	$1,525,000	$2,700,000
Loan Origination Date:	June 8, 2009	September 28, 2009
Appraised Value:	$3,197,000	$4,176,000* (As-completed)
Loan to Value (LTV):	48%	65%
Interest Rate:	14%	14%
Loan Fees:	Origination (4.0%); Exit (4%)	Origination (5.5%); Exit (4%)
Term:	12 Months	9 Months

(d) The sentence in the paragraph under the heading "Liquidity; Callability" within the section entitled **"DESCRIPTION OF THE NOTES"** on pages 19 and 20 of the Memorandum which reads "Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company" is deleted in its entirety and is replaced with the following:

> Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount and which have been outstanding for a minimum of 12 months may be called by the Noteholders upon not less than 90 days written notice to the Company. The 12 month-minimum holding restriction only applies to Notes purchased on or after January 1, 2010.

The information in this Third Supplement supersedes any information to the contrary provided in the Offering Memorandum.

(e) The Company has terminated its managing broker-dealer agreement with Select Capital Corporation, or Select, subject to the continuing rights and obligations of the Company and Select surviving termination of the agreement. Following the termination, the Company engaged Richfield Orion International, Inc., a member of FINRA, or Richfield Orion, to provide managing broker-dealer services on the same terms and conditions as it had engaged Select under the previous managing broker-dealer agreement. Selling compensation will be payable to Richfield Orion in the same manner and under the same conditions as such amounts would have been payable to Select. The Memorandum, including the sections entitled "Offering Summary - Plan of Distribution," "Plan of Distribution," "Glossary" and the footnotes to the commissions table and use of proceeds table, is hereby modified to reflect the replacement of Select with Richfield Orion.

SUPPLEMENTAL INFORMATION - The Private Placement Memorandum for the Offering of Notes consists of this sticker, the Memorandum dated August 29, 2008, the First Supplement to the Memorandum dated October 3, 2008, the Second Supplement dated June 16, 2009, and this Third Supplement dated January 20, 2010, which supplements, modifies, and supersedes some of the information contained in the Memorandum, the First Supplement and the Second Supplement.

EXHIBIT A

10:46 AM
01/06/10
Accrual Basis

RE Capital Investments, LLC
Balance Sheet
As of December 31, 2009

	Dec 31, 09	
ASSETS		
Current Assets		
Checking/Savings		
Bank of America Checking - 357		28,076.68
Total Checking/Savings		28,076.68
Total Current Assets		28,076.68
Fixed Assets		
Long Term Assets		
Investments - Partnerships	25,500,000.00	
Land Investments (net of 3rd pa	2,000,000.00	
Total Long Term Assets		27,500,000.00
Total Fixed Assets		27,500,000.00
Other Assets		
Investment		
CCS Trop-215, LLC	1,600,000.00	
Clearwater REI (Star)	3,375,000.00	
Horseshoe Bend - 30 Acres Comme	5,700,000.00	
Horseshoe Bend 400 (Program 1)	6,400,000.00	
ICP - Serene Meadows (20%)	1,600,000.00	
New Meadows	6,400,000.00	
Silver Mountain LLC (30%)	480,000.00	
WhiteCloud / New Meadow (62%)	1,984,000.00	
Total Investment		27,539,000.00
Note Receivables		
Clearwater - Bunker Hill	436,831.04	
Clearwater - MAC	73,500.00	
Clearwater Lodging		
Additional Capital Interest	25,000.00	
Initial Capital Interest	400,000.00	
Clearwater Lodging - Other	1,540,000.00	
Total Clearwater Lodging	1,965,000.00	
Clearwater REI LLC	458,763.00	
Cude-Barnett	80,000.00	
Heritage Lands LLC -Future Inte	342,357.96	
Horseshoe Bend - 3200 Acres	465,209.16	
Idaho Capital Partners LLC	400,040.00	
Real Seed Capital	225.00	
Silver Mountain LLC	300,000.00	
Trop-215 Developer LLC	485,171.17	
Total Note Receivables		5,007,097.33
Total Other Assets		32,546,097.33
TOTAL ASSETS		60,074,174.01
LIABILITIES & EQUITY		
Liabilities		
Long Term Liabilities		
Notes Payable		
Clearwater REI (Star)	2,335,000.00	
DH	300,000.00	
Diamond B Asset Management	554,557.19	
Heritage Lands LLC	2,530,000.00	
Interest Payable	46,763.00	
McCall Real Estate	25,000.00	
Terron Investments Inc.	600,000.00	
TH	300,000.00	
Total Notes Payable		6,691,320.19
Total Long Term Liabilities		6,691,320.19
Total Liabilities		6,691,320.19
Equity		
Land Equity		18,540,000.00
Partnership Equity		41,244,000.00
Retained Earnings		-339,478.14
Net Income		-6,061,668.04
Total Equity		53,382,853.82
TOTAL LIABILITIES & EQUITY		60,074,174.01

EXHIBIT 16

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

January 12, 2012

****IMPORTANT PLEASE READ****

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

RE: 2011 LIQUIDATION NOTIFICATION
Clearwater 2008 Note Program, LLC

Dear Noteholder,

This correspondence is being sent to you in connection with your request to liquidate your Note held by the Clearwater 2008 Note Program ("Note Program") in the 2011 liquidation year.

In our most recent correspondence and more specifically the "Notice to Noteholder's" letter dated 10/26/2011, you were notified of the need to modify the interest distributions due to cash flow and liquidity concerns within the Note Program.

In light of these cash flow and liquidity concerns and after careful consideration, the Manager has determined that in the best interest of the Note Program's long-term preservation and continuity, the Note Program regrettably must postpone all 2011 liquidation requests until further notice.

This difficult decision has been made due to multiple factors including, the uncertainty of the capital markets, a borrowers' delay in the refinance of underlying asset in the Note Program and the Note Program's capital needs for the upcoming year. While we cannot say exactly when the liquidations will be reinstated, we can assure you that your priority date will be maintained and as soon as management deems the program to be in a position to reinstate the liquidations you will be liquidated according to your original priority date.

We are grateful for your investment in the Note Program and although we would like nothing more than to accommodate liquidation requests at this time, we cannot since doing so would place the future stability of the Note Program at risk and we cannot jeopardize the whole in favor of a few. We are requesting your patience as we work through this challenge.

We understand the impact this has on you as a Noteholder and we want to assure you that our primary focus is to preserve and return your valued principal. Your patience as we work through this difficult real estate economy is greatly appreciated.

If you have any questions regarding this correspondence, please send us an email at InvestorServices@ClearwaterREI.com and we will respond in a timely manner.

Sincerely,

Investor Services
Clearwater Real Estate Investments
(866) 217-4906 toll-free
InvestorServices@clearwaterrei.com

EXHIBIT 17

Clearwater Real Estate Investments
1300 E State Street, Ste 103
Eagle, Idaho 83616
(866) 217-4906

CLEARWATER
REAL ESTATE INVESTMENTS

January 31, 2012

****IMPORTANT PLEASE READ****

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

RE: CLEARWATER 2008 NOTE PROGRAM

Dear Noteholder:

In light of the challenges the Clearwater 2008 Note Program, LLC, (the "Note Program") has faced over the past year and in an effort to provide more regular communication to our valued Noteholders we are providing the enclosed update. This update is designed to inform you not only as to updates on the program but also of ideas Management has been working on to improve your position as it relates to your security in the Note Program. The enclosed update covers information on the following topics.

1) Clearwater Update: Our Commitment
2) Real Estate Market Update: Stabilization
3) Asset Update: Florence, AZ
4) Asset Updates: Missouri, Mississippi, and Washington
5) Investment Update

In addition, and as a follow-up to our most recent correspondence, and more specifically the "Notice to Noteholders" letter dated 10/26/2011, in which you may recall the necessary modifications implemented to the interest distributions through January of this year due to delayed anticipated liquidity events. The reinstatement of the interest distributions was dependent upon those liquidity events and to date, the Note Program has not experienced any such events.

Similar to December and January payments, the February payment will be 25% of the monthly interest distributed and 75% of the interest will accrue and compound for the benefit of the Noteholders in accordance with Section 3 of the Note dated August 29, 2008.

IMPORTANT: As of January 1, 2012 all Noteholders previously participating in the Interest Reinvestment Program have been converted to receive monthly distributions of their interest. This change will permit **only** the interest reinvested and/or distributed to be included on your 1099-INT for the upcoming 2012 tax year. Please note, this change will in no way affect the interest rate of your note. As of January 1, 2012 any unpaid interest will continue to accrue and compound monthly at the annual rate of 9.0%.

If you have any questions regarding this correspondence, please send us an email at InvestorServices@ClearwaterREI.com and we will respond in a timely manner.

Thank you for your attention to this important information concerning your investment.

Sincerely,

Clearwater 2008 Note Program

JAN 2012

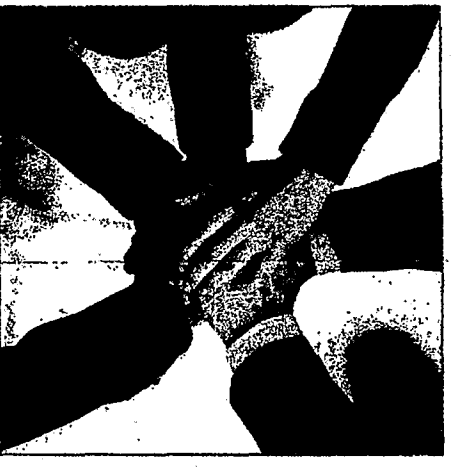
January Update

Clearwater 2008 Note Program, LLC

» Clearwater Update: Our Commitment

After over four years in business Clearwater is still here amidst a devastating time for our industry. According to the Financial Industry Regulatory Authority (FINRA) over 500 member firms have fallen by the wayside in that same time period.

Despite this challenging environment we would like to reaffirm our commitment to you. We want to assure you that our primary focus is to provide the highest possible return in today's environment. Your continued patience as we work through these challenges is greatly appreciated.



» Real Estate Market Update: Stabilization

At Clearwater we strive to keep abreast of the latest real estate data and trends. Below are some of the recent month's data.

Real Estate values have fallen dramatically nationwide and the banking industry has been shaken to its foundation. However, many economists are now anticipating a gradual real estate stabilization.

Any real estate stabilization will be rooted in the growth of the overall economy; some recent data would seem to indicate that US economic conditions are improving.

1) **The unemployment rate fell from 9.8% in November 2010 to 8.6% in November 2011.**

2) **GDP is expected to grow in 2012.**

There has also been some promising news in the housing market. Housing is a leading indicator for the types of assets in the Note Program because they are development properties.

[Joseph LaVorgna, chief U.S. economist for Deutsche Bank, said "There has been a noticeable uptrend in several key housing metrics in the back half of this year, so even though we are downplaying the November data to some degree, it does appear that residential construction is finally beginning to rise from its post-recession lows..."]

Source: CNNMoney (12/20/2011) "Home Building Spikes Higher" http://money.cnn.com/2011/12/20/real_estate/construction_building_permits/index.htm

Financial services company Credit Suisse is telling investors and asset managers to expect a bumpy stabilization in U.S. residential home prices in 2012.

["U.S. homes now appear fairly valued compared with median family income," said Martin Berhard, Credit Suisse global real estate analyst. "Furthermore, the interest rate environment is likely to remain accommodative for the foreseeable future. We therefore expect housing demand to recover gradually in 2012."]

Source: HousingWire (12/14/2011) "Credit Suisse expects home prices to stabilize in 2012" http://www.housingwire.com/2011/12/14/credit-suisse-expects-home-prices-to-stabilize-in-2012

Contents

Clearwater Real Estate Investments
1300 E State Street, Ste 103, Eagle, Idaho 83616 | Ph: (866) 217-4906 | InvestorServices@ClearwaterREI.com

» Asset Update: Florence, AZ

The Florence Hospital loan continues to be in default and in a work out situation. However, we are pleased to report that the hospital is currently in negotiations with a healthcare real estate investment trust that is planning on refinancing the 08 Note Program's position.

» Asset Updates: Missouri, Mississippi, and Washington

Raymore, Missouri
This asset has been fully leased and is performing well. All 18 units are currently leased at an average rate of $992 per month. The property generated a positive Net Operating Income for 2011 and we expect that this level of performance will continue and gradually improve. There is some pending legal action with the borrowers that is prohibiting the liquidation of this asset. We are hopeful that this will be resolved by the end of 2012.

Bay St. Louis, Mississippi
This asset consists of a residential subdivision and 14 additional acres that the 08 Note Program secured as additional collateral. Both assets have now been removed from bankruptcy and the foreclosures have been completed, with the exception of 2 parcels which the Note Program is attempting to remove from a bankruptcy stay. Both properties are being listed by a regional brokerage firm at their appraised values. We expect to begin entertaining offers in the coming months.

Kenmore, Washington
The Trail Walk Condominium first mortgage has been repaid. However, a deficiency remains due to the 08 Note Program but we continue to pursue our rights under the second mortgage. We are hopeful to come to a solution on this property in the coming year.

» Investment Update

The economic crisis has placed a heavy burden on the Noteholders and Management has been working diligently to alleviate this pressure.

As a Noteholder, you purchased an interest in an unsecured General Promissory Note ("General Note"). The money raised from the General Note was then redeployed by the Note Program into five secured promissory notes.

As the picture (below) indicates, the Noteholders are currently unsecured with the Note Program holding the actual secured interest in the collateral; however, Management has been working on creative ideas in an effort to better position its Noteholders as it relates to your security in the underlying collateral.

Rest assured, your investment has always included 1st position financing and includes a principal only corporate guaranty. This illustration merely illustrates the unsecured interest in the collateral which we would like to improve upon.

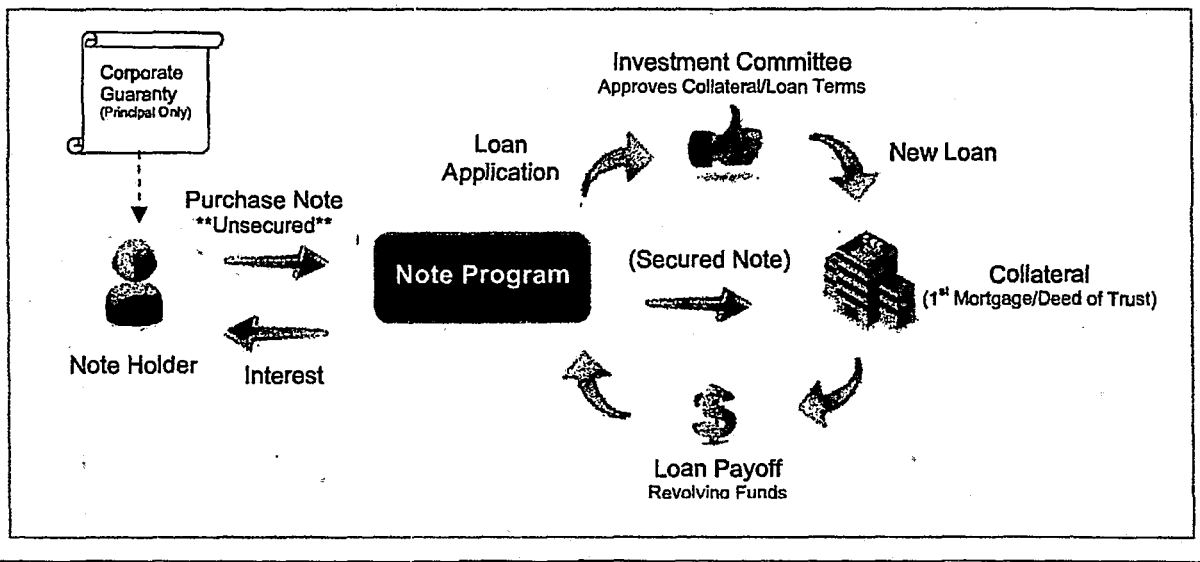


EXHIBIT 18

CLEARWATER
REAL ESTATE INVESTMENTS

Clearwater Real Estate Investments
1300 E State Street, Ste 103
Eagle, ID 83616

October 1 - December 31, 2011

QUARTERLY STATEMENT

Clearwater 2008 Note Program, LLC

CERTIFICATE NUMBER	08-470
CURRENT BALANCE	50,000.00

804 **********MIXED AADC 836

Mark Boling
21986 CAYUGA LN
LAKE FOREST CA 92630-2303

Have you signed up for E-Statements
»It's as easy as 1, 2, 3...
1) Go to www.Clearwaterrei.com
2) Click on "Investors"
3) Follow Online Instructions

CUSTOMER SERVICE

INVESTOR SERVICES:	Toll-free (866) 217-4906	YOUR ADVISOR:	Marna Hart (949) 859-7127 Independent Financial Group
EMAIL:	InvestorServices@clearwaterrei.com		
WEBSITE:	www.clearwaterrei.com		

INVESTMENT INFORMATION

OWNER:	Mark Boling		
CERTIFICATE NUMBER:	08-470	CUSTODIAN ACCOUNT NUMBER:	n/a
TYPE (QUALIFIED? Y/N):	no	EFFECTIVE DATE:	02/27/10

INVESTMENT ACTIVITY

	Previous Activity	Current Quarter	Investment To Date
Initial Investment	50,000.00	-	50,000.00
Additional Investments	-	-	-
Reinvested Interest	-	-	-
Accrued Interest	-	470.16	470.16
Ending Balance	50,000.00	-	50,000.00
Interest Payments Disbursed	6,775.00	656.25	7,431.25

COLLATERAL SUMMARY

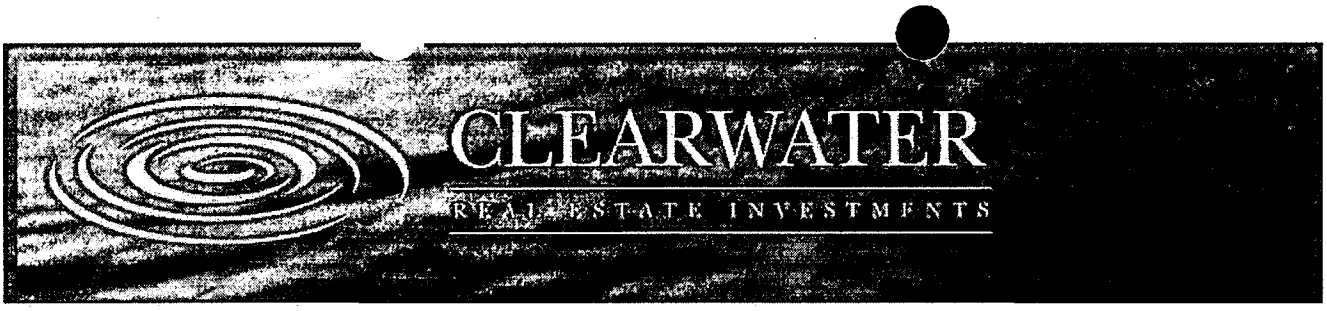
Clearwater 2008 Note Program, LLC

Total Outstanding Principal Balance of Master Promissory Note to Investors	Total Appraised Values of Collateral
$21,810,000	$25,120,000

Collateral valuations dated September 15, 2010, January 19, 2011 and September 21,2011.

Questions about this report
This report contains important information about your investment. We encourage you to review the details in this report. If you do not understand any of the information in this report, we encourage you to contact us by phone (866) 217-4906 or email at InvestorServices@clearwaterrei.com

EXHIBIT 19



TERMS OF USE

This website is owned and maintained by Clearwater Real Estate Investments, LLC. By accessing this website you are indicating that you have read, acknowledge and agree to be bound by these terms and conditions (also referred to as an "agreement" here). Your agreement shown by accessing and using this website is as legally binding as if you signed a written document. If you do not agree to all of these terms and conditions, do not access this website. Clearwater Real Estate Investments, LLC and its affiliates (referred to as "Clearwater Real Estate Investments, LLC" or "us" or "we") may change these terms and conditions, and you are responsible for regularly reviewing and complying with them. Your continued use of this website constitutes your agreement to all those terms and conditions.

This website comprises various website and pages operated by Clearwater Real Estate Investments, LLC and information contained therein (together, the "website"). Certain sections of the website may contain separate terms and conditions, which are in addition to this agreement. You should read those additional terms and conditions carefully. By accessing such sections or pages, you agree to be bound by those additional terms and conditions. In the event of a conflict, those additional terms and conditions will govern your use of those sections or pages.

You may not attempt to gain unauthorized access to the website, or computer systems or networks connected to the website, through hacking, password or data mining, or any other means to circumvent security procedures. You may not use bots, spiders or intelligent agent software or other methods for any purpose other than accessing publicly posted portions of the website and then only as authorized by the license we provide you below under "Proprietary Rights". Unauthorized use of our website and systems or misuse of your password is strictly prohibited. "Unauthorized use" includes using publicly available information for purposes which are (i) not authorized by this agreement, or (ii) not consistent with the license set out below in the section entitled "Proprietary Rights".

You may not use the website in any manner that could damage, disable, overburden, or impair the website or any service we provide or interfere with any other party's use and enjoyment of the website or any service we provide.

You agree that any information you provide us through the website will be correct and complete.
The information and materials on the website may contain errors or inaccuracies, including both typographical and substantive errors. We reserve the right, in our sole discretion, without any obligation and without any notice requirement, to discontinue, change, improve or correct the information, materials and descriptions on the website and to suspend or deny access to the website for scheduled or unscheduled maintenance, upgrades, improvements or corrections. Any dated information is published as of its date only, and we have no responsibility to update or amend any such information.

Disclaimers of Warranty

THE INFORMATION, PRODUCTS AND SERVICES ON THE WEBSITE ARE PROVIDED ON AN "AS IS," "WHERE IS" AND "WHERE AVAILABLE" BASIS AND ARE USED ONLY AT YOUR SOLE RISK.

WE AND OUR AGENTS AND LICENSORS EXPRESSLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY, TITLE, NON-INFRINGEMENT, OF ERROR-FREE OR UNINTERRUPTED SERVICES, OR THAT THE INFORMATION ON THIS WEBSITE WILL MEET YOUR NEEDS OR EXPECTATIONS.

WE DO NOT WARRANT, GUARANTY, OR MAKE ANY REPRESENTATIONS WHATSOEVER, EXPRESS OR IMPLIED, OR ASSUME ANY LIABILITY TO YOU, INCLUDING REGARDING (I) THE USE OR THE RESULTS OF ACCESS TO THE WEBSITE OR ANY DELAY OR LOSS OF OR LIMIT ON ACCESS TO OR USE OF THE WEBSITE, OR (II) SYSTEM PERFORMANCE AND EFFECTS ON OR DAMAGES TO SOFTWARE AND HARDWARE IN CONNECTION WITH ANY USE OF THE WEBSITE. WE SHALL NOT BE LIABLE FOR ANY HARM CAUSED BY THE TRANSMISSION THROUGH THE WEBSITE OF A COMPUTER VIRUS, OTHER COMPUTER CODE OR PROGRAMMING DEVICE THAT MIGHT BE USED TO ACCESS, MODIFY, DELETE, DAMAGE, CORRUPT, DEACTIVATE, DISABLE, DISRUPT, OR OTHERWISE IMPEDE IN ANY MANNER THE OPERATION OF THE WEBSITE OR ANY OF YOUR SOFTWARE,

HARDWARE, DATA OR PROPERTY. EXCEPT AS OTHERWISE REQUIRED BY THE LAW, WE SHALL HAVE NO LIABILITY FOR LOSSES CAUSED BY THE NEGLIGENCE, ACTIONS OR FAILURE TO ACT OF ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, YOUR INTERNET ACCESS PROVIDER.

Limitation of Liability

CLEARWATER REAL ESTATE INVESTMENTS, LLC AND ITS AGENTS AND LICENSORS SHALL NOT HAVE ANY RESPONSIBILITY WHATSOEVER AND SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR OTHER DAMAGES OR LOST PROFITS OR SAVINGS OR OTHER ECONOMIC HARM YOU MAY INCUR OR SUFFER (REGARDLESS OF WHETHER SUCH DAMAGES ARE REASONABLY FORESEEABLE AND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE) FROM (I) YOUR ACCESS TO OR USE OF THE WEBSITE OR ANY RELIANCE BY YOU ON THE WEBSITE, OR INABILITY TO ACCESS THE WEBSITE, (II) THE RELIABILITY, ACCURACY, COMPLETENESS OR TIMELINESS THEREOF, (III) ANY DELAYS OR ERRORS IN THE TRANSMISSION OR DELIVERY OF ANY INFORMATION OR ANY PART OF THE WEBSITE, (IV) THE INTERCEPTION OR USE BY THIRD PARTIES OF ANY INFORMATION YOU PROVIDE TO US, OR (V) ANY OTHER REASON.

Proprietary Rights

All right, title and interest in the website is the exclusive property of Clearwater Real Estate Investments, LLC, except as otherwise stated. You may not access, modify, copy, distribute, transmit, display, perform, reproduce, publish, license, frame, create derivative works from, transfer, or otherwise use in whole or in part any part of the website, except for the purposes expressly provided herein, without our prior written approval. If you download any information from this website, you agree that you will not remove or obscure any copyright or other notices or legends contained in such information. You further agree not to provide any copies of documents or the contents of the website to third parties without our written consent.
You have a limited, personal, non-transferable, non-exclusive license to view and copy the publicly accessible information on this website for your personal noncommercial use, and only on one computer. You are not permitted to resell or transfer any information obtained from this website to anyone else. This license can be terminated by us at any time, at which time you must destroy all copies of the licensed materials. This license is conditioned on your continued adherence to all the terms of this agreement.
Clearwater Real Estate Investments, LLC, the Clearwater Real Estate Investments, LLC logo and other Clearwater Real Estate Investments, LLC trademarks which appear on the website are trade names and trademarks of Clearwater Real Estate Investments, LLC. The names of other actual companies and third-party products and services mentioned herein are the trade names and trademarks of their owners. You may not use any trademarks for any purpose including, but not limited to, use as metatags on other sites on the World Wide Web without the prior written permission of Clearwater Real Estate Investments, LLC or the third party which owns the marks.

Clearwater Real Estate Investments, LLC respects the intellectual property of others and asks that our users do the same. It is the policy of Clearwater Real Estate Investments, LLC to respond expeditiously to claims of intellectual property infringement by promptly processing and investigating notices of alleged infringement and taking appropriate actions under the Digital Millennium Copyright Act and other applicable intellectual property laws. If you believe that your copyrighted work is accessible on the website in a way that constitutes copyright infringement, you may notify us by providing us with the following information: (1) the electronic or physical signature of the owner of the copyright or of the person authorized to act on the owner's behalf; (2) identification of the copyrighted work or other intellectual property that you claim is being infringed; (3) identification of the material that you claim is infringing; (4) identification of the URL or other specific location on the website where the material that you claim is infringing is located; (5) your name, address, telephone number, and email address; (6) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and (7) a statement by you, made under penalty of perjury, that the information in your notice is accurate and that you are the copyright owner or are authorized to act on the copyright owner's behalf.

Notice of claims of copyright infringement on the website should be sent to:

Clearwater Real Estate Investments, LLC
1300 E State Street, Ste 103
Eagle, Idaho 83616
Ph: 208.639.4488
Fax: 208.939.4484
clearwaterinfo@clearwaterrei.com

No Solicitation

The information on the website is made available for informational purposes only. None of the information contained in the public access portions of the website constitutes a solicitation or offer by Clearwater Real Estate Investments, LLC to buy or sell any securities or other financial instruments or provide any investment advice. The information contained in the public access portions of the website is limited to the dissemination of general information regarding products and services. The information and services provided on the website are not provided to and may not be used by any person or entity in any jurisdiction where the provisions or use thereof would be contrary to applicable laws, rules or regulations of any governmental authority or regulatory or self-regulatory organization or where Clearwater Real Estate Investments, LLC is not authorized to provide such information or services. Some products or services described in the website may not be available in all jurisdictions or to all persons.

Use of Links

The website may contain links to and be linked from third-party websites. These links are provided only as a convenience and do not imply an affiliation, sponsorship, endorsement, approval, investigation, verification or monitoring by Clearwater Real Estate Investments, LLC of any information contained in any third-party website. We are not responsible for the information contained on third-party websites or your use or inability to use the third-party websites. If you choose to connect to a third-party website, Clearwater Real Estate Investments, LLC makes no warranties, either express or implied, concerning the content of such site, including the accuracy, completeness, reliability, or suitability of the site for any particular purpose, nor does Clearwater Real Estate Investments, LLC warrant that such site or content is free from any claims of copyright, trademark, or other infringement of the rights of third parties or that such site or content is devoid of viruses or other contamination. You should also be aware that the terms and conditions of such site and the site's privacy policy may be different from those applicable to your use of our website.

Indemnification

You hereby indemnify and hold harmless Clearwater Real Estate Investments, LLC and its directors, officers, employees, control persons, vendors, licensors and agents, from and against any and all claims, actions, proceedings, losses, liabilities,

damages, costs and expenses (inc. .ıg reasonable attorneys' and experts' fees and cost sing out of or related to (i) any use or access by you (or on your behalf) of the website; (ii) any breach by you of any agreements, or representations and warranties; (iii) any access to or use of the website by you in violation of any rights of Clearwater Real Estate Investments, LLC or any third party, including, but not limited to, copyright, patent, trade secret, trademark, or other intellectual property rights and publicity and privacy rights; (iv) any access to or use of the website by you in violation of any applicable law, rule or regulation; or (v) any unauthorized access of, or through, the website to any computer system.

Full and Complete Agreement Regarding Website

These terms and conditions represent the complete and exclusive statement of the agreement between you and us regarding your rights to access and use the website, and supersedes all prior agreements and representations (whether written or oral), regarding this subject matter, except as otherwise provided herein. This agreement is in addition to, and does not nullify, any other agreement between you and Clearwater Real Estate Investments, LLC, including, but not limited to, any terms and conditions in the password-protected areas of the website, governing the conduct of your relationship with Clearwater Real Estate Investments, LLC.

I HAVE READ AND UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS AND ANY TERMS AND CONDITIONS IN THE PASSWORD-PROTECTED AREAS OF THE WEBSITE WHICH I ACCESS.

PRIVACY POLICY

Privacy is important to Clearwater Real Estate Investments, LLC. We use safeguards to protect your privacy and confidentiality. This policy discusses information we collect and the manner in which it is used.

Clearwater reserves the right, at any time, to add to, change, update, or modify our privacy policy simply by posting such change, update or modification on the Web site. Any such change, update or modification will be effective immediately upon posting on the Web site.

Information access
Upon request we provide site visitors with access to contact information (e.g., name, address, phone number) that we maintain about them. Consumers can access this information by sending us email at the below address, calling us at the below telephone number, or writing to us at the below address.

Upon request we offer visitors the ability to have inaccuracies corrected in contact information.

Consumers can have this information corrected by sending us email at the below address, calling us at the below telephone number, or writing to us at the below address.

Employees
Our employees may view information that you provide us in order to perform their jobs and service you. We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you.

Information sharing
We do not share nonpublic personal information to third parties who are not affiliated with us. We do not disclose any nonpublic personal information about you with anyone for any purpose that is not specifically permitted by law.

Marketing
Clearwater and its affiliates do not sell or share customer information to marketers outside of our company.

Links to other Web sites
Our Web site may contain links to Web sites that are provided and maintained exclusively by third parties. Web sites provided and maintained by third parties are not subject to this privacy policy. Please review the privacy policies on those Web sites to understand their personal information handling practices. We make no representations concerning the privacy policies of these third-party Web sites.

Third-party providers
Clearwater uses certain third parties who provide services that relate to email and may require that you enroll and provide them certain information related to these services. These services are administered entirely by these third parties, who are not subject to this policy. If you participate in any of these services, please review their privacy policy to understand their personal information handling practices. We make no representations concerning the privacy policies of these third parties.

Information Collected
We may collect nonpublic personal information from you when you voluntarily provide personally identifiable information to us though our Web site, such as when ordering services/products and accessing account specific or other profile information. We may collect information about your transactions that we secure from our files and from our affiliates. We may collect information that we receive from consumer reporting agencies. We may collect information that we receive from others involved in your transactions, such as real estate agents, accommodators or lenders. We limit use of such information to the purposes for which the information was provided. However, we reserve the right to use such information for marketing/product development research and other similar purposes and/or to contact you regarding additional services or products that you may find useful.

If you send an email message that includes personally identifiable information, for example, in an email message containing an inquiry, we will use that information to respond to your inquiry. Remember that email is not necessarily secure against interception. If your communication is very sensitive, or includes information such as your bank account, charge card, or social security number, you should not send it electronically unless it is encrypted or our Web site indicates the particular site is secure.

We may use cookies to improve our service to you. Cookies may help us recall a previous visit. The cookies we use do not collect personally identifiable information, and we do not use them to determine your identity. If you are not comfortable with this use, you may configure your browser to be notified when cookies are to be received and to provide you with the option of refusing cookies. However, refusing cookies may limit your ability to use our Web site in its entirety.

Contact from Clearwater
Persons who supply us with their email addresses may receive contact from us with information regarding new products and services or upcoming events. If you do not want to receive email from Clearwater in the future, please let us know by sending us email at the below address, calling us at the below telephone number, or writing to us at the below address.

If you supply us with your postal address online you may receive periodic mailings from us with information on new products and services or upcoming events. If you do not wish to receive such mailings, please let us know by calling us at the number provided below, emailing us at the below address, or writing to us at the below address.

Persons who supply us with their telephone numbers online may receive telephone contact from us with information regarding new products and services or upcoming events. If you do not wish to receive such telephone calls, please let us know by sending us email at the below address, calling us at the below telephone number, or writing to us at the below address.

Contact Information
Clearwater Real Estate Investments, LLC
1300 E State Street, Ste 103
Eagle, Idaho 83616
Ph: 208.639.4488
clearwaterinfo@clearwaterrei.com

© Copyright 2007. Clearwater Real Estate Investments. All rights reserved Terms And Conditions | Contact

EXHIBIT 20

IDAHO SECRETARY OF STATE
Search for Business Entities

Ben Ysursa, Secretary of State

Enter Search Criteria

Welcome to the Business Entity search.

Search

Read our tips for suggestions on successful searches.

No Business Entities Found

Business Entity Name: RE Capital Investments, LLC

Business Entity City:

Organizational ID / Filing Number:

Registered Agent Name:

Registered Agent City:

Date of Origination / Authorization: (month / day / 4-digit year)

Start: / / End: / /

File Types in Index:

- C CORPORATION
- D ASSUMED BUSINESS NAME
- G NAME REGISTRATION
- J LIMITED LIABILITY PARTNERSHIP (LLP)
- K PARTNERSHIP AUTHORITY (GP)
- L LIMITED PARTNERSHIP
- R NAME RESERVATION
- T TRAINING
- U UNINCORPORATED NON PROFIT ASSOCIATION
- W LIMITED LIABILITY COMPANY

Search

[UCC/Lien Search] [Log out]

Idaho Secretary of State's Main Page State of Idaho Home Page

Comments, questions or suggestions can be emailed to: sosinfo@sos.idaho.gov

IDAHO SECRETARY OF STATE
Search for Business Entities

Ben Ysursa, Secretary of State

Enter Search Criteria

Welcome to the Business Entity search.

Search

Read our tips for suggestions on successful searches.

No Business Entities Found

Business Entity Name: Clearwater Real Estate Investments

Business Entity City:

Organizational ID / Filing Number:

Registered Agent Name:

Registered Agent City:

Date of Origination / Authorization: (month / day / 4-digit year)

Start: / / End: / /

File Types in Index:

- C CORPORATION
- D ASSUMED BUSINESS NAME
- G NAME REGISTRATION
- J LIMITED LIABILITY PARTNERSHIP (LLP)
- K PARTNERSHIP AUTHORITY (GP)
- L LIMITED PARTNERSHIP
- R NAME RESERVATION
- T TRAINING
- U UNINCORPORATED NON PROFIT ASSOCIATION
- W LIMITED LIABILITY COMPANY

Search

[UCC/Lien Search] [Log out]

Idaho Secretary of State's Main Page State of Idaho Home Page

Comments, questions or suggestions can be emailed to: sosinfo@sos.idaho.gov

EXHIBIT 21

A.M. _____ P.M. 4:32

OCT 16 2012

CHRISTOPHER D. RICH, Clerk
By TARA THERRIEN
DEPUTY

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC., an Idaho limited liability company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONALD D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; RON RUEBEL, an individual; RE CAPITAL INVESTMENTS, LLC., a Delaware limited liability company, Plaintiffs, vs. MARK BOLING, an individual, Defendant.	Case No.: CV-OC 2012-08669 DECISION AND ORDER RE: MOTION TO STAY ARBITRATION

The plaintiffs filed this action on May 14, 2012 to stay arbitration on the grounds that they are not signatories to any arbitration agreement with the defendant. It is undisputed that the defendant, Mark Boling, signed a Subscription Agreement for the Clearwater 2008 Note Program LLC (Note Program LLC) with Clearwater REI, LLC acting as agents for the Note Program LLC. The Subscription Agreement included an arbitration provision. On February 15, 2012, Mark Boling filed a demand for arbitration with the American Arbitration Association. The demand for arbitration listed Clearwater REI, LLC., Clearwater Real Estates Investments LLC, RE Capital , LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher Benak, and Ron Ruebel.[1] In addition to his Answer, the defendant also filed a Counterclaim and Third Party Complaint. It should be noted that RE Capital has filed bankruptcy so this Court will not address any issues related to it. The Court has previously

[1] All facts used in this Decision are those which were admitted by the defendant in the Answer.

000475

denied the plaintiffs' motion to dismiss the Counterclaim pursuant to I.R.C.P. 12 (b)(1) since the Court does have subject matter jurisdiction over the types of claims raised by the defendant's pleadings. *Borah v. McCandless*, 147 Idaho 73, 205 P.3d 1209 (2009). The Court notes that the relief sought by the plaintiffs is a determination that they are *not* subject to the requirement to arbitrate contained in the Subscription Agreement—if their position is correct, that hardly gives a basis for them to evade any direct liability they may have for consumer protection violations on the record as it currently exists,[2] at a minimum, the Court could not address the merits of the claim on this record.

The parties to the Subscription Agreement are Clearwater 2008 Note Program LLC, an Idaho limited liability company, and Mark Boling. Until or unless additional evidence is presented to the Court as provided for by I.R.C.P. 43(e) that would warrant any other conclusion, the only parties which are required to arbitrate are Clearwater 2008 Note Program LLC and Mark Boling. The motion to stay arbitration as to Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher Benak, and Ron Ruebel and Clearwater Real Estates Investments LLC is granted.

It is so ordered.

Dated this 16 day of October, 2012.

Deborah A. Bail
District Judge

[2] The Idaho Rules of Civil Procedure do not recognize "Declarations." Evidentiary submissions for motions are required to be submitted under oath either by way of affidavits or depositions or oral testimony if permitted by the Court or by stipulations of the parties. I.R.C.P. 43(e). The Counterclaim and Third Party Complaint are not verified. Idaho Rule of Evidence 201 does not authorize the Court to take judicial notice of the attachments to the Counterclaim or Third Party Complaint.

EXHIBIT 22

EMPLOYMENT AGREEMENT

Employment Agreement between Clearwater Real Estate Investments (the "Company") and Bart Cochran (the "Employee").

1. For good consideration, the Company employs the Employee on the following terms and conditions.

2. **Term of Employment.** Subject to the provisions for termination set forth below this agreement will begin on October 1, 2007.

3. **Compensation.** The Company shall pay Employee a salary of $102,000 per year, or $8,500 per month, for the services of Employee, payable at semi-monthly payroll periods. Employee shall also benefit from a profit sharing arrangement. Employee shall earn 20.5% of profits earned by the Company. However, this profit-sharing arrangement shall not be effective until Company has raised in excess of $8 million (including tenant-in-common equity offerings and note program debt offerings). For example, if Company earns $1 million profit in a year, Employee shall be credited with $205,000 of income from this profit. However, distribution of any profit shall be determined quarterly and may or may not be paid based on cash flow needs of the Company as well as current and future projects under consideration by the Company. Special consideration shall be given to pay at least 40% of profits allocated to Employee at year end in order to pay taxes on same before taxes are due the following year. Distribution of any profits shall be analyzed by ownership the month following each quarter and may be paid the first payroll period following the month after quarter's end if profits are agreed to be paid based on a majority of ownership.

4. **Duties and Position.** The Company hires the Employee in the capacity of Director of Operations. Notwithstanding the specificity of Employee's title, Employee's duties may be reasonably modified at the Company's discretion from time to time.

5. **Health Insurance.** The Company agrees to pay for monthly health insurance premium of Employee and Employee's family.

6. **Employee to Devote Full Time to Company.** The Employee will devote full time, attention, and energies to the business of the Company, and, during this employment, will not engage in any other business activity, regardless of whether such activity is pursued for profit, gain, or other pecuniary advantage. Employee is not prohibited from making personal investments in any other businesses provided those investments do not require active involvement in the operation of said companies.

7. **Confidentiality of Proprietary Information.** Employee agrees to sign attached confidentiality agreement.

8. **Reimbursement of Expenses.** The Employee may incur reasonable expenses for furthering the Company's business, including expenses for entertainment, travel, and

similar items. The Company shall reimburse Employee for all business expenses after the Employee presents an itemized account of expenditures, pursuant to Company policy.

9. **Vacation**. The Employee shall be entitled to an annual vacation of three weeks at full pay.

10. **Termination of Agreement**. Without cause, the Company may terminate this agreement at any time upon three (3) days' written notice to the Employee. If the Company requests, then Employee will continue to perform his/her duties and may be paid his/her regular salary up to the date of termination. In addition, the Employee may terminate employment upon fourteen (14) days' written notice to the Company. Employee may be required to perform his or her duties and will be paid the regular salary to date of termination but shall not receive severance allowance. Notwithstanding anything to the contrary contained in this agreement, the Company may terminate the Employee's employment upon fourteen (14) days' notice to the Employee should any of the following events occur:

(a) The sale of substantially all of the Company's assets to a single purchaser or group of associated purchasers; or

(b) The sale, exchange, or other disposition, in one transaction of the majority of the Company's outstanding corporate shares; or

(c) The Company's decision to terminate its business and liquidate its assets;

(d) The merger or consolidation of the Company with another company.

(e) Bankruptcy or chapter 11 reorganization.

11. **Death Benefit**. Should Employee die during the term of employment, the Company shall pay to Employee's estate any compensation due through the end of the month in which death occurred.

12. **Assistance in Litigation**. Employee shall upon reasonable notice, furnish such information and proper assistance to the Company as it may reasonably require in connection with any litigation in which it is, or may become, a party either during or after employment.

13. **Effect of Prior Agreements**. This Agreement supersedes any prior agreement between the Company or any predecessor of the Company and the Employee, except that this agreement shall not affect or operate to reduce any benefit or compensation inuring to the Employee of a kind elsewhere provided and not expressly provided in this agreement.

14. **Settlement by Arbitration**. Any claim or controversy that arises out of or relates to this agreement, or the breach of it, shall be settled by arbitration in accordance with the

rules of the American Arbitration Association. Judgment upon the award rendered may be entered in any court with jurisdiction.

15. **Limited Effect of Waiver by Company**. Should Company waive breach of any provision of this agreement by the Employee, that waiver will not operate or be construed as a waiver of further breach by the Employee.

16. **Severability**. If, for any reason, any provision of this agreement is held invalid, all other provisions of this agreement shall remain in effect. If this agreement is held invalid or cannot be enforced, then to the full extent permitted by law any prior agreement between the Company (or any predecessor thereof) and the Employee shall be deemed reinstated as if this agreement had not been executed.

17. **Assumption of Agreement by Company's Successors and Assignees**. The Company's rights and obligations under this agreement will inure to the benefit and be binding upon the Company's successors and assignees.

18. **Oral Modifications Not Binding**. This instrument is the entire agreement of the Company and the Employee. Oral changes have no effect. It may be altered only by a written agreement signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought.

Signed this 8th day of November 2007.

Company

Employee BART COCHRAN

EXHIBIT 23

EMPLOYMENT AGREEMENT

Employment Agreement between Clearwater Real Estate Investments (the "Company") and Rob Ruebel (the "Employee").

1. For good consideration, the Company employs the Employee on the following terms and conditions.

2. **Term of Employment.** Subject to the provisions for termination set forth below this agreement will begin on November 5, 2007.

3. **Compensation.** For the four months beginning November 5, 2007 until February 29, 2008, the Company shall pay Employee a salary of $4,000 per month, for the services of the Employee, payable at semi-monthly payroll periods. In addition, for the four months beginning November 5, 2007 until February 29, 2008, Employee shall earn 75 bps for each dollar raised. For example, in the first four months, if Employee raised $1 million in a month, Employee would earn the $4,000 salary AND $7,500 for the funds raised for a total of $11,500. Beginning March 1, 2008, Employee shall earn 100 bps for each dollar raised and the $4,000 monthly salary will be changed to a $4,000 draw. For example, if Employee raises $1 million in one month, Employee shall earn $10,000 for the month. The $10,000 shall be reduced for the $4,000 monthly draw for an amount payable of $6,000. Compensation other than draws shall be calculated at the end of each month and payable at the first payroll period of the following month. Amounts raised will not be credited to Employee until investor funds have closed and have been transferred to accounts controlled by the Company or affiliates.

4. **Duties and Position.** The Company hires the Employee in the capacity of Vice President - Sales. The Employee's duties may be reasonably modified at the Company's discretion from time to time.

5. **Health Insurance.** The Company agrees to pay for monthly health insurance premium of Employee. The Company agrees to pay half of the monthly health insurance premium of Employee's family. The Company agrees to begin this benefit for Employee in December 2007.

6. **Employee to Devote Full Time to Company.** The Employee will devote full time, attention, and energies to the business of the Company, and, during this employment, will not engage in any other business activity, regardless of whether such activity is pursued for profit, gain, or other pecuniary advantage. Employee is not prohibited from making personal investments in any other businesses provided those investments do not require active involvement in the operation of said companies.

7. **Confidentiality of Proprietary Information.** Employee agrees to sign attached confidentiality agreement.

8. **Reimbursement of Expenses.** The Employee may incur reasonable expenses for

furthering the Company's business, including expenses for entertainment, travel, and similar items. The Company shall reimburse Employee for all business expenses after the Employee presents an itemized account of expenditures, pursuant to Company policy.

9. **Vacation**. The Employee shall be entitled to an annual vacation of three weeks at full pay.

10. **Termination of Agreement**. Without cause, the Company may terminate this agreement at any time upon three (3) days' written notice to the Employee. If the Company requests, then Employee will continue to perform his/her duties and may be paid his/her regular salary up to the date of termination. In addition, the Employee may terminate employment upon fourteen (14) days' written notice to the Company. Employee may be required to perform his or her duties and will be paid the regular salary to date of termination but shall not receive severance allowance. Notwithstanding anything to the contrary contained in this agreement, the Company may terminate the Employee's employment upon fourteen (14) days' notice to the Employee should any of the following events occur:

(a) The sale of substantially all of the Company's assets to a single purchaser or group of associated purchasers; or

(b) The sale, exchange, or other disposition, in one transaction of the majority of the Company's outstanding corporate shares; or

(c) The Company's decision to terminate its business and liquidate its assets;

(d) The merger or consolidation of the Company with another company.

(e) Bankruptcy or chapter 11 reorganization.

11. **Death Benefit**. Should Employee die during the term of employment, the Company shall pay to Employee's estate any compensation due through the end of the month in which death occurred.

12. **Assistance in Litigation**. Employee shall upon reasonable notice, furnish such information and proper assistance to the Company as it may reasonably require in connection with any litigation in which it is, or may become, a party either during or after employment.

13. **Effect of Prior Agreements**. This Agreement supersedes any prior agreement between the Company or any predecessor of the Company and the Employee, except that this agreement shall not affect or operate to reduce any benefit or compensation inuring to the Employee of a kind elsewhere provided and not expressly provided in this agreement.

14. **Settlement by Arbitration**. Any claim or controversy that arises out of or relates to

this agreement, or the breach of it, shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered may be entered in any court with jurisdiction.

15. **Limited Effect of Waiver by Company.** Should Company waive breach of any provision of this agreement by the Employee, that waiver will not operate or be construed as a waiver of further breach by the Employee.

16. **Severability.** If, for any reason, any provision of this agreement is held invalid, all other provisions of this agreement shall remain in effect. If this agreement is held invalid or cannot be enforced, then to the full extent permitted by law any prior agreement between the Company (or any predecessor thereof) and the Employee shall be deemed reinstated as if this agreement had not been executed.

17. **Assumption of Agreement by Company's Successors and Assignees.** The Company's rights and obligations under this agreement will inure to the benefit and be binding upon the Company's successors and assignees.

18. **Oral Modifications Not Binding.** This instrument is the entire agreement of the Company and the Employee. Oral changes have no effect. It may be altered only by a written agreement signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought.

Signed this 8th day of November 2007.

Company

Employee

EXHIBIT 24

This Consulting Agreement (the "Agreement") is entered into this [specify date] by and between Diamond B Asset Management, a Corporation, ("Consultant") and Clearwater Real Estate Investments (the "Company").

RECITALS

WHEREAS, the Company is in need of assistance in the Commercial Real Estate Acquisition support area; and

WHEREAS, Consultant has agreed to perform consulting work for the Company in providing input, analyzing, recommendation, and access at any time throughout the month to provide support and consulting services and other related activities as directed by the Company;

NOW, THEREFORE, the parties hereby agree as follows:

1. Consultant's Services. Consultant shall be available and shall provide to the Company professional consulting services in the area of Commercial Real Estate Acquisition support ("Consulting services") as requested.

2. Consideration.

A. RATE. In consideration for the Consulting Services to be performed by Consultant under this Agreement, the Company will pay Consultant at the rate of $8,500.00 per month for time spent on Consulting Services. Consultant is not required to submit written, signed reports of the time spent performing Consulting Services. Consultant is required to be accessible via email and telephone at any hour during the normal business work week.

B. EXPENSES. Additionally, the Company will reimburse Consultant for the following expenses incurred while the Agreement between Consultant and the Company exists:

- All travel expenses to and from all work sites
- Meal expenses;
- Administrative expenses;
- Lodging Expenses if work demands overnight stays; and
- Miscellaneous travel-related expenses (parking and tolls.

Consultant shall submit written documentation and receipts where available itemizing the dates on which expenses were incurred. The Company shall pay Consultant the amounts due pursuant to submitted reports within 14 days after a report is received by the Company.

3. Independent Contractor. Nothing herein shall be construed to create an employer-employee relationship between the Company and Consultant. Consultant is an independent contractor and not an employee of the Company or any of its subsidiaries or affiliates. The consideration set forth in Section 2 shall be the sole consideration due Consultant for the services rendered hereunder. It is understood that the Company will not withhold any amounts for payment of taxes from the compensation of Consultant hereunder. Consultant will not represent to be or hold herself out as an employee of the Company.

4. Confidentiality. In the course of performing Consulting Services, the parties recognize that Consultant may come in contact with or become familiar with information which the Company or its subsidiaries or affiliates may consider confidential. This information may include, but is not limited to, information pertaining to the Company underwriting and analyzing systems, which information may be of value to a competitor. Consultant agrees to keep all such information confidential and not to discuss or divulge it to anyone other than appropriate Company personnel or their designees.

5. Term. This Agreement shall commence on January 1, 2008 and shall terminate on December 31, 2008, unless earlier terminated by either party hereto. Either party may terminate this Agreement upon Thirty (30) days prior written notice. The Company may, at its option, renew this Agreement for an additional One (1) year term on the same terms and conditions as set forth herein by giving notice to Consultant of such intent to renew on or before December 1, 2008.

6. Notice. Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the first class mail of the United States properly addressed to the appropriate party at the address set forth below:

1. Notices to Consultant:

Diamond B Asset Management

PO Box 2563

Carmel, CA 93921

2. Notices to the Company:

Clearwater Real Estate Investments, LLC

1300 E. State Street, Ste 103

Eagle, ID 83616

7. Miscellaneous.

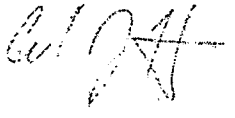
7.1 Entire Agreement and Amendments. This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and replaces and supersedes all other agreements or understandings, whether written or oral. No amendment or extension of the Agreement shall be binding unless in writing and signed by both parties.

7.2 Binding Effect, Assignment. This Agreement shall be binding upon and shall inure to the benefit of Consultant and the Company and to the Company's successors and assigns. Nothing in this Agreement shall be construed to permit the assignment by Consultant of any of its rights or obligations hereunder, and such assignment is expressly prohibited without the prior written consent of the Company.

7.3 Governing Law, Severability. This Agreement shall be governed by the laws of the State of Idaho. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision.

WHEREFORE, the parties have executed this Agreement as of the date first written above.

Clearwater Real Estate Investments, LLC

By: 

Diamond B Asset Management

By: 

January 1, 2008

This Consulting Agreement (the "Agreement") is entered into this [specify date] by and between Terron Investments, a Corporation, ("Consultant") and Clearwater Real Estate Investments (the "Company").

RECITALS

WHEREAS, the Company is in need of assistance in the Commercial Real Estate Acquisition support area; and

WHEREAS, Consultant has agreed to perform consulting work for the Company in providing input, analyzing, recommendation, and access at any time throughout the month to provide support and consulting services and other related activities as directed by the Company;

NOW, THEREFORE, the parties hereby agree as follows:

1. Consultant's Services. Consultant shall be available and shall provide to the Company professional consulting services in the area of Commercial Real Estate Acquisition support ("Consulting services") as requested.

2. Consideration.

A. RATE. In consideration for the Consulting Services to be performed by Consultant under this Agreement, the Company will pay Consultant at the rate of $8,500.00 per month for time spent on Consulting Services. Consultant is not required to submit written, signed reports of the time spent performing Consulting Services. Consultant is required to be accessible via email and telephone at any hour during the normal business work week.

B. EXPENSES. Additionally, the Company will reimburse Consultant for the following expenses incurred while the Agreement between Consultant and the Company exists:

- All travel expenses to and from all work sites
- Meal expenses;
- Administrative expenses;
- Lodging Expenses if work demands overnight stays; and
- Miscellaneous travel-related expenses (parking and tolls.

Consultant shall submit written documentation and receipts where available itemizing the dates on which expenses were incurred. The Company shall pay Consultant the amounts due pursuant to submitted reports within 14 days after a report is received by the Company.

3. Independent Contractor. Nothing herein shall be construed to create an employer-employee relationship between the Company and Consultant. Consultant is an independent contractor and not an employee of the Company or any of its subsidiaries or affiliates. The consideration set forth in Section 2 shall be the sole consideration due Consultant for the services rendered hereunder. It is understood that the Company will not withhold any amounts for payment of taxes from the compensation of Consultant hereunder. Consultant will not represent to be or hold herself out as an employee of the Company.

4. Confidentiality. In the course of performing Consulting Services, the parties recognize that Consultant may come in contact with or become familiar with information which the Company or its subsidiaries or affiliates may consider confidential. This information may include, but is not limited to, information pertaining to the Company underwriting and analyzing systems, which information may be of value to a competitor. Consultant agrees to keep all such information confidential and not to discuss or divulge it to anyone other than appropriate Company personnel or their designees.

5. Term. This Agreement shall commence on January 1, 2008 and shall terminate on December 31, 2008, unless earlier terminated by either party hereto. Either party may terminate this Agreement upon Thirty (30) days prior written notice. The Company may, at its option, renew this Agreement for an additional One (1) year term on the same terms and conditions as set forth herein by giving notice to Consultant of such Intent to renew on or before December 1, 2008.

6. Notice. Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the first class mail of the United States properly addressed to the appropriate party at the address set forth below:

1. Notices to Consultant:

Terron Investments

1883 Barcelona

Shell Beach, CA 93449

2. Notices to the Company:

Clearwater Real Estate Investments, LLC

1300 E. State Street, Ste 103

Eagle, ID 83616

7. Miscellaneous.

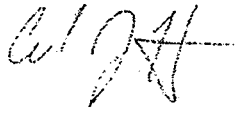
7.1 Entire Agreement and Amendments. This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and replaces and supersedes all other agreements or understandings, whether written or oral. No amendment or extension of the Agreement shall be binding unless in writing and signed by both parties.

7.2 Binding Effect, Assignment. This Agreement shall be binding upon and shall inure to the benefit of Consultant and the Company and to the Company's successors and assigns. Nothing in this Agreement shall be construed to permit the assignment by Consultant of any of its rights or obligations hereunder, and such assignment is expressly prohibited without the prior written consent of the Company.

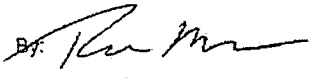
7.3 Governing Law, Severability. This Agreement shall be governed by the laws of the State of Idaho. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision.

WHEREFORE, the parties have executed this Agreement as of the date first written above.

Clearwater Real Estate Investments, LLC

By: 

Terron Investments

By: 

January 1, 2008

This Consulting Agreement (the "Agreement") is entered into this [specify date] by and between RE Capital Investments, a Limited Liability Company, ("Consultant") and Clearwater Real Estate Investments (the "Company").

RECITALS

WHEREAS, the Company is in need of assistance in the Commercial Real Estate Acquisition support area; and

WHEREAS, Consultant has agreed to perform consulting work for the Company in providing input, analyzing, recommendation, and access at any time throughout the month to provide support and consulting services and other related activities as directed by the Company;

NOW, THEREFORE, the parties hereby agree as follows:

1. Consultant's Services. Consultant shall be available and shall provide to the Company professional consulting services in the area of Commercial Real Estate Acquisition support ("Consulting services") as requested.

2. Consideration.

A. RATE. In consideration for the Consulting Services to be performed by Consultant under this Agreement, the Company will pay Consultant at the rate of $8,500.00 per month for time spent on Consulting Services. Consultant is not required to submit written, signed reports of the time spent performing Consulting Services. Consultant is required to be accessible via email and telephone at any hour during the normal business work week.

B. EXPENSES. Additionally, the Company will reimburse Consultant for the following expenses incurred while the Agreement between Consultant and the Company exists:

- All travel expenses to and from all work sites
- Meal expenses;
- Administrative expenses;
- Lodging Expenses if work demands overnight stays; and
- Miscellaneous travel-related expenses (parking and tolls.

Consultant shall submit written documentation and receipts where available itemizing the dates on which expenses were incurred. The Company shall pay Consultant the amounts due pursuant to submitted reports within 14 days after a report is received by the Company.

3. Independent Contractor. Nothing herein shall be construed to create an employer-employee relationship between the Company and Consultant. Consultant is an independent contractor and not an employee of the Company or any of its subsidiaries or affiliates. The consideration set forth in Section 2 shall be the sole consideration due Consultant for the services rendered hereunder. It is understood that the Company will not withhold any amounts for payment of taxes from the compensation of Consultant hereunder. Consultant will not represent to be or hold herself out as an employee of the Company.

4. Confidentiality. In the course of performing Consulting Services, the parties recognize that Consultant may come in contact with or become familiar with information which the Company or its subsidiaries or affiliates may consider confidential. This information may include, but is not limited to, information pertaining to the Company underwriting and analyzing systems, which information may be of value to a competitor. Consultant agrees to keep all such information confidential and not to discuss or divulge it to anyone other than appropriate Company personnel or their designees.

5. Term. This Agreement shall commence on January 1, 2009 and shall terminate on December 31, 2009, unless earlier terminated by either party hereto. Either party may terminate this Agreement upon Thirty (30) days prior written notice. The Company may, at its option, renew this Agreement for an additional One (1) year term on the same terms and conditions as set forth herein by giving notice to Consultant of such intent to renew on or before December 1, 2009.

6. Notice. Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the first class mail of the United States properly addressed to the appropriate party at the address set forth below:

1. Notices to Consultant:

RE Capital Investments

PO Box 2563

Carmel, CA 93921

2. Notices to the Company:

Clearwater Real Estate Investments, LLC

1300 E. State Street, Ste 103

Eagle, ID 83616

7. Miscellaneous.

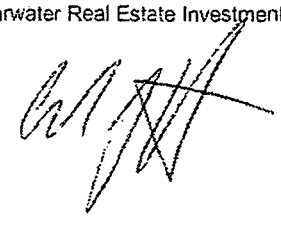
7.1 Entire Agreement and Amendments. This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and replaces and supersedes all other agreements or understandings, whether written or oral. No amendment or extension of the Agreement shall be binding unless in writing and signed by both parties.

7.2 Binding Effect, Assignment. This Agreement shall be binding upon and shall inure to the benefit of Consultant and the Company and to the Company's successors and assigns. Nothing in this Agreement shall be construed to permit the assignment by Consultant of any of its rights or obligations hereunder, and such assignment is expressly prohibited without the prior written consent of the Company.

7.3 Governing Law, Severability. This Agreement shall be governed by the laws of the State of Idaho. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision.

WHEREFORE, the parties have executed this Agreement as of the date first written above.

Clearwater Real Estate Investments, LLC

By: 

RE Capital Investments

By. RE Capital Investments, LLC

By:
Name: Diamond B Asset Management
Title: Managing Member

January 1, 2009

EXHIBIT 25

SECOND AMENDMENT TO OPERATING AGREEMENT OF CLEARWATER REI, LLC

an Idaho Limited Liability Company

This Second Amendment to Operating Agreement of Clearwater REI LLC ("Amendment") is entered into this 1st day of January, 2009.

WHEREAS, the Membership Interest, the profit interest and, the voting interest of the members have been changed as set forth in Exhibit A to the Operating Agreement;

WHEREAS, the members desire to clarify the authority of the Managers;

In and for good and valuable consideration the members have elected to amend the Operating Agreement and agree as follows:

1. All capitalized terms used herein shall have the same meanings set forth in the Operating Agreement.

2. The members agree that as of the date of this Amendment the Membership Interests, voting interest, and profit interests are as follows:

	Membership Interest	Voting Interest	Profit Interest
Leap, Inc.	19.58%	22.50%	17.40%
Green Jacket Investments, Inc.	19.58%	22.50%	17.40%
Steeves and Associates, Inc.	5.0%	5.0%	13.75%
R.E. Capital Investments, LLC	55.84%	50%	51.45%

3. The members hereby consent that Steeves and Associates, Inc. membership interest and voting interest will remain at 5.0% henceforth.

4. The members hereby consent that Steeves and Associates, Inc. profit interests will adjust to 10.83% on January 1, 2010, 7.92% on January 1, 2011 and 5.0% on January 1, 2012. Such action shall be valid without call, notice, or meeting by the members.

5. The members hereby consent that Steeves and Associates, Inc. membership interest and profit interest will not transferred, sold or optioned until said time that the membership interest is 5.0% and profit interest is 5.0% and completed in accordance with Article 9.

6. The members hereby consent to the provisions set forth in the preceding Sections.

7. The Operating Agreement shall be revised to modify the following Section 3.2:

3.2 Notice of Meeting. Notice of the date, time, and place of any meeting of members shall be given to each member not more than sixty (60) days nor less than (2) days before the meeting date. The notice must also include a description of the purpose or purposes for which the meeting is called. Email is an acceptable method of noticing members of a meeting.

8. The Operating Agreement shall be revised to add the following Section 4.14:

> 4.14 Notwithstanding the anything in the Operating Agreement to the contrary, the Managers shall have the authority to file on behalf of the Company any and all documents necessary, in their reasonable discretion related to state and federal securities, banking and/or financing, laws, rules or regulations.

9. The Operating Agreement shall be revised to modify the following section 4.3:

> 4.3 Authority. Subject to restrictions that may be imposed from time to time by the manager or members, the manager shall be an agent of the Company with authority to bind the Company in the ordinary course of its business.
>
> The manager shall have no authority, however, to bind the Company as to the following matters without first obtaining the approval of a Super Majority:
>
> - Sale, exchange, mortgage, pledge, hypothecation, lease or other transfer or disposition of Company property with a value in excess of Fifty Thousand Dollars ($50,000);
> - Purchase or acquisition of property with a value in excess of Fifty Thousand Dollars ($50,000);
> - Merger of the Company with another entity;
> - Amendment to the Articles of Organization or this Operating Agreement;
> - Incurring or refinancing of indebtedness by the Company in an aggregate amount greater than Fifty Thousand Dollars ($50,000) in any twelve (12) month period;
> - Execution, consent, approval, ratification or performance of a contract, instrument or agreement which requires the payment or performance of services with a value in excess of Fifty Thousand Dollars ($50,000), unless such action is taken in the ordinary course of business;
> - A transaction involving an actual or potential conflict of interest between a member or manager and the Company;
> - A change in the nature of the business of the Company;

- The institution, prosecution and defense of any action or proceeding in the Company's name; or
- To expend the sums referenced on Exhibit A.

10. Concurrently herewith, the members shall execute a resolution setting forth the provisions in the preceding Section.

11. Except to the extent modified herein, the Operating Agreement shall remain in full force.

Leap, Inc.
By: Bart Cochran
Its President

R.E. Capital Investments, LLC
By: Chris Benak
Its Managing Member

Green Jacket Investments, Inc.
By: Chad Hansen
Its President

Steeves and Associates, Inc.
By: Don Steeves
Its President

EXHIBIT 26

Gmail by Google

Bart Cochran <bart@clearwaterrei.com>

Broker-Dealer/Registered Rep Conference Call - Clearwater 2008 Note Program

Ross Farris <ross@clearwaterrei.com> Mon, Oct 17, 2011 at 3:58 PM
To: Chad Hansen <chad@clearwaterrei.com>, Bart Cochran <bart@clearwaterrei.com>

Chad/Bart - here's the email I will send out tomorrow with your approval... let me know if 11 am MDT will work.

Broker-Dealer/Registered Rep Conference Call

» Clearwater 2008 Note Program, LLC

Greetings: October 18, 2011

Clearwater will be conducting a conference call for all Clearwater 2008 Note Program Broker-Dealers & Registered Representatives to discuss the attached DRAFT correspondence.

If you have any questions regarding this correspondence, we ask that you email your question(s) to us prior to the call and we will attempt to address all questions received on the call. Please submit your question(s) via email to InvestorServices@ClearwaterREI.com and reference "Clearwater 2008 Note Program" in the subject line.

Please join us on Friday, October 21st at 11:00 am MDT (10:00 am PDT) by using the following dial-in number:

Dial-in Number: (712) 432-0075

Conference Code: **436384**

Thank you for your attention to this important matter concerning your client(s).

Sincerely,

Investor Services

(866) 217-4906

InvestorServices@clearwaterrei.com

CLEARWATER

866.217.4906 toll-free | www.ClearwaterREI.com

FOR BROKER-DEALER USE ONLY

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply mail and destroy all copies and the original message. This document does not constitute an offer to sell or a solicitation of an offer to purchase securities. Any such offer shall be made solely pursuant to the Private Placement Memorandum to Accredited Investors. All investment strategies have risks. Past performance and/or forward statements are never an assurance of future results. Only the Private Placement Memorandum or Prospectus is controlling.

Notice to Noteholders_08 NP_DRAFT 2011-10-14.pdf
41K

****IMPORTANT PLEASE OPEN IMMEDIATELY****

<ADDRESSEE>
<ADDRESS>
<CITY, STATE ZIP>

Dear Note Holder:

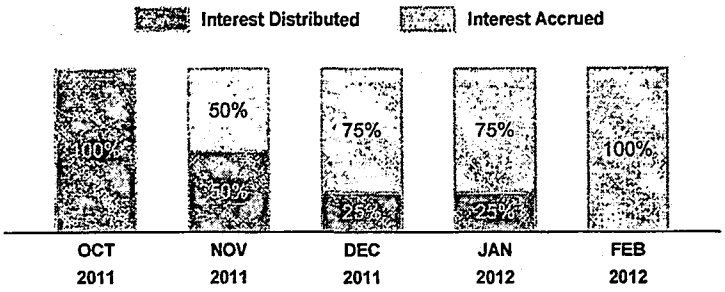
It has been over three years since the Clearwater 2008 Note Program, LLC (the "Note Program") first began offering Notes on August 29, 2008. Over the course of those three years, the Note Program has consistently delivered payments in the aggregate amount of **$3,046,180** to its Note Holders resulting in a 9.0% average annual return on invested principal.

This return has been realized amidst what many deem as the most severe economic downturn our economy has experienced in decades. All the while, the Note Program has sought to maintain its conservative guidelines to preserve value for its Note Holders.

The Note Program's business plan involves financing real estate acquisition and development projects. Unfortunately, the Note Program has not been immune to the recent downturn. Its borrowers have experienced significant challenges in realizing their exit strategies which has hindered their ability to meet their obligations to the Note Program and in turn the Note Program's ability to meet its obligation to the Note Holders. After careful consideration, the Manager has determined that it's in the best interest of the Note Program's long-term preservation and continuity to discontinue interest payments to the Note Holders for the time being, however the Note Holders' interest will continue to accrue at the same rate.

Accordingly, please be advised that until further notice, all distributions beginning October 15, 2011, will be as follows:

Date	Noteholders (Interest payments)	Noteholders (Reinvesting)
Oct 15, 2011	100% of the monthly interest will be distributed. (No Modification)	Interest will be reinvested as it did prior to this notice.
Nov 15, 2011	50% of the monthly interest will be distributed and 50% will accrue and compound for the benefit of the Noteholders in accordance with Section 3 of the Note dated August 29, 2008.	Interest will be reinvested as it did prior to this notice.
Dec 15, 2011	25% of the monthly interest will be distributed and 75% will accrue and compound for the benefit of the Noteholders in accordance with Section 3 of the Note dated August 29, 2008.	Interest will be reinvested as it did prior to this notice.
Jan 15, 2012	25% of the monthly interest will be distributed and 75% will accrue and compound for the benefit of the Noteholders in accordance with Section 3 of the Note dated August 29, 2008.	Interest will be reinvested as it did prior to this notice.
Feb 15, 2012	It is expected 0% of the monthly interested will be distributed and 100% will accrue and compound for the benefit of the Note holders in accordance with Section 3 of the Note dated August 29, 2008. However, the Note Program cash assets will be reassessed at that time to determine whether the program is in a position to reinstate the monthly interest payments or if distributions will require further modification.	It is expected that interest will accrue and compound for the benefit of the Note holders in accordance with Section 3 of the Note dated August 29, 2008. However, the Note Program cash assets will be reassessed at this time to determine whether the program is in a position to reinstate the monthly interest payments or if distributions will require further modification.



The chart to the left illustrates the above mentioned interest distribution schedule for Note Holders currently receiving monthly interest distributions.

NOTE: Investors currently participating in the Interest Reinvestment Plan, currently reinvest their interest distributions rather than receive payments each month, accordingly there is NO change to the Interest Reinvestment Plan.

Notwithstanding the need to discontinue monthly interest payments, Note Holders can be optimistic of the collateral position of the Note Program today. As shown in the following table, because of conservative underwriting, the loans made by the Note Program continue to be secured by the following collateral.

Description of 1st Deed Collateral	Principal Loan Amount	Most Recent Valuation	Date of Valuation
Healthcare of Florence	$ 9,800,000	$ 21,500,000	1/19/2011
Legends 19 – Townhomes	$ 1,475,500	$ 1,720,000	9/15/2010
(1) Coastal Gables - Horizontal Loan (Infrastructure Development) [1]	$ 1,525,000	$ 1,554,400 [1]	9/21/2011
(2) Coastal Gables - Vertical Loan (Construction - 18 Duplexes)	$ 2,063,977	$ 345,600	9/21/2011
TOTALS	**$ 14,864,477**	**$ 25,299,800**	

[1] Includes additional collateral

DISCLOSURE: The valuations provided above reflect the appraised values at the date referenced above and may differ from the current value.

The Promissory Note made to Trailwalk, LLC which was secured by the first deed of trust on property located in Seattle, WA has paid in full and the deed of trust has been released. Litigation regarding the Promissory Note secured by the second deed of trust continues and is subject to the appellate court decision.

Loan Portfolio Update

The following information provides detailed updates for each of the five portfolio loans and the current strategies being undertaken to preserve and maximize value for the Note Holders.

Healthcare of Florence
Florence, AZ
(Non Affiliate loan)

Description: This loan is secured by a First Deed of Trust ("FDOT") on a 90,000 SF general hospital and long term care facility. The facility is located in one of the most underserved healthcare markets in the nation.

Original Takeout Plan: Upon completion of the renovations, the loan was to be paid off through a refinance with an outside lender.

Update: The loan has matured and the borrowers have been unable to refinance the note due to the difficulties facing the financial markets and delays in the stabilization of the asset. The borrower has made interest payments as they have had the ability to do so; however, as of July 31, 2011 they have fallen behind by $454,955.42. The Note Program is currently in loan work out negotiations with the Borrower.

The appraisal was updated as of 1/19/11 and it shows a "as-is" value of $20,385,000 (48.07% LTV) and a value at "full stabilization" of $21,500,000 (45.58% LTV).

Current Strategy: Healthcare of Florence management expects that when the Operating Rooms become fully operational that the hospital should reach profitability. The Note Program is considering a loan workout with the Borrower to allow the hospital the time needed to reach profitability after which the hospital would have to start making full interest payments or repay the loan in full through a refinance. If the borrower is unable to do so within the time allotted for the loan workout the Note Program maybe forced to pursue its rights under the deed of trust.

Legends 19 - Townhomes
Raymore, MO
(Non Affiliate loan)

Description: Eighteen Townhomes in Raymore, MO (Kansas City) owned by the Note Program through foreclosure.

Original Takeout Plan: Primary, refinance through a traditional lender, secondary, foreclosure and liquidation.

Update: The Note Program has completed the foreclosure on this property and now owns this asset. The Note Program has stabilized the asset and occupancy is currently at 94.44% (17 of 18). The average lease rate is $962.65 per month.

Current Strategy: As noted above the foreclosure of this property is now complete and the Note Program is managing the asset. It is our intention to continue to lease units and collect the positive cash flow in order to assist in meeting the Note Program's obligations. As the real estate market recovers we will liquidate units. There is still some outstanding litigation related to the foreclosure that is clouding title and hindering the sale of units and a trial date has been set for 2012. .

Coastal Gables - (1) Horizontal Loan; (2) Vertical Loan
Bay St. Louis, MS
(Non Affiliate loan)

Description:
(1) Horizontal Loan - This loan is secured by a FDOT on 124 of 142 residential lots located in Bay St. Louis, Mississippi. Proceeds were used for horizontal development.
(2) Vertical Loan - This loan is secured by a FDOT on phase one (consisting of 18, of 142, lots on which 36 units were to be constructed utilizing the loan proceeds).

Original Takeout Plan:
(1) Horizontal Loan - Lot releases upon commencement of vertical construction.
(2) Vertical Loan - Sales of individual units to investors looking to take advantage of numerous available incentives, and a strong housing market, in the Gulf Opportunity Zone ("GO Zone").

Update: The horizontal construction is substantially complete. Unfortunately, the borrower has lost the government incentives that made this project attractive. The project is significantly behind schedule and due to the lost incentives is no longer economically viable in its current form. The Note Program has initiated foreclosure.

Current Strategy: The Note Program is working diligently to foreclose in order to liquidate the asset.

In conclusion, we would like to extend our sincerest gratitude and reaffirm our pledge to you to continue to provide the highest level of service and transparent communication to our valued Note Holders. We want to assure you that our primary focus is to preserve and return your valued principal and we are committed to work diligently in hopes of providing the highest possible return in today's environment. Your patience as we work through these challenges is greatly appreciated.

If you have any questions regarding this correspondence, please send us an email at InvestorServices@ClearwaterREI.com and we will respond in a timely manner.

Sincerely,
Clearwater 2008 Note Program, LLC

EXHIBIT 27

227

CERTIFICATE OF ASSUMED BUSINESS NAME

Pursuant to Section 53-504, Idaho Code, the undersigned submits for filing a certificate of Assumed Business Name.

Please type or print legibly.
Instructions are included on back of application.

FILED EFFECTIVE
2012 JUL 24 AM 1:14
SECRETARY OF STATE
STATE OF IDAHO

1. The assumed business name which the undersigned use(s) in the transaction of business is:

   Clearwater Real Estate Investments

2. The true name(s) and business address(es) of the entity or individual(s) doing business under the assumed business name:

Name	Complete Address
Clearwater REI, LLC	1300 E. State Street, Ste. 103, Eagle, ID 83616
(W67057)	

3. The general type of business transacted under the assumed business name is:

- ☐ Retail Trade
- ☐ Wholesale Trade
- ☐ Services
- ☐ Manufacturing
- ☐ Transportation and Public Utilities
- ☐ Construction
- ☐ Agriculture
- ☐ Mining
- ☑ Finance, Insurance, and Real Estate

Submit Certificate of Assumed Business Name and **$25.00** fee to:

Secretary of State
450 North 4th Street
PO Box 83720
Boise ID 83720-0080
208 334-2301

4. The name and address to which future correspondence should be addressed:

   Clearwater REI, LLC
   1222 Vista Avenue
   Boise, ID 83705

5. Name and address for this acknowledgment copy is (if other than # 4 above):

Signature: [signature]
Printed Name: Chad Hansen
Capacity/Title: Officer
Signature: _____
Printed Name: _____
Capacity/Title: _____

abn.pmd Rev. 07/2010

Secretary of State use only

IDAHO SECRETARY OF STATE
07/24/2012 05:00
CK: 10/3158 CT: 172099 BH: 1333230
1 @ 25.00 = 25.00 ASSUM NAME # 2

D157055

Ada County Clerk
DEC 10 2012
RECEIVED
Bail
Tara
KT
12-10-12

NO.
A.M. 10 FILED P.M.
DEC 10 2012
CHRISTOPHER D. RICH, Clerk
By ANNAMARIE MEYER
DEPUTY

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630
(949) 588-9222
(949) 588-7078 [fax]
maboling@earthlink.net
Defendant/Counter-Claimant/Third Party Plaintiff, in pro se

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT

FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, et al. Plaintiffs/Counter-Defendants, vs. MARK BOLING, Defendant/Counter-Claimant	Case No.: CV OC 1208669 **NOTICE OF MOTION AND DEFENDANT/COUNTER-CLAIMANT'S MOTION TO COMPEL ARBITRATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
AND RELATED ACTIONS	**If Required:** **Date: February 6, 2013** **Time: 2:00 p.m.** **Place: 200 W. Front St., Boise, ID** **[Request for Telephonic Appearance, if any – *I.R.C.P.*, Rule 7 (b) (4)]**

COME NOW, the above named Defendant/Counter-Claimant/Third Party Plaintiff Mark Boling ("Boling"), in pro se, and hereby files this Motion to Compel Arbitration under Idaho Code §§ 7-902 (c) and (a) against Counterdefendants Clearwater REI, LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak and Rob Ruebel (Collectively "Counterdefendants") that shall proceed summarily. This motion is supported by a Memorandum of Points and Authorities, Affidavit of Mark

Boling in Support of said motion filed concurrently herewith, the papers and pleading filed in this action and such other evidence presented at oral argument, if any.

The Affidavit of Mark Boling provides sufficient evidence to the Court as provided for by I.R.C.P. 43(e) that would warrant another conclusion to the Court's October 16, 2012 Order granting Counterdefendants' Motion to Stay Arbitration.

For expediency, Boling requests that the Court consider and summarily rule on this motion without the necessity of a hearing on the matter within fourteen (14) days of service of this motion.

PLEASE TAKE NOTICE, if a hearing is required, Boling requests that such hearing be set at the earliest available date, but has reserved a hearing date with a telephonic appearance on the matter for February 6, 2013, at 2:00 p.m. at the Ida County Courthouse located at 200 W. Front St., Boise, ID.

Dated: December 6, 2012

Mark Boling

MARK BOLING,
Defendant/Counter-Claimant/Third Party Plaintiff

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

California Statutes

Federal Cases

California Cases

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL ARBITRATION

INTRODUCTION AND SUMMARY OF ARGUMENT[1]

This action arises out of conduct involving the purchase and performance of a real estate investment with Defendant/Counter-Claimant Mark Boling ("Boling") by individuals employees and affiliated business entities related to Clearwater Real Estate Investments aka Clearwater Real Estate Investments, LLC ("Clearwater"). All Counterdefendants have challenged Boling's demand to arbitrate his claims for Breach of Guaranty against Counterdefendant RE Capital Investments, LLC and violations of the Idaho Consumer Protection Act, I.C. §§ 48-601 – 48-619 ("ICPA") against all nonsignatory Counterdefendants under the agreement.

The right to arbitrate Boling's Breach of Guaranty claim against the nonsignatory Counterdefendant RE Capital Investments, LLC exists because the Guaranty is part of the entire agreement. Thus, the guarantor, RE Capital Investments, LLC, is bound by the arbitration clause in the entire agreement. [2]

The right to arbitrate Boling's ICPA claims against the nonsignatory Counterdefendants exists because 1) Counterdefendants' actionable conduct is inextricably interwoven with the formation and performance of the entire agreement, 2)

---

[1] The statement of facts and all exhibits identified or referenced in this document are taken from Boling's affidavit ("Boling Affdvt.") filed concurrently herewith.

[2] Counterdefendants have represented in this action that the Guarantor, RE Capital, LLC has filed bankruptcy on July 7, 2012. Therefore, this Breach of Guaranty claim for relief is stayed during the pendency of said purported bankruptcy action and no action is requested against RE Capital Investments, LLC.

a benefit was conferred on the nonsignatory Counterdefendants as a result of the agreement, making the nonsignatory Counterdefendants a third party beneficiary of the arbitration agreement, 3) a preexisting relationship existed between the nonsignatory Counterdefendants and Clearwater 2008 Note Program, LLC (the "Company"), making it equitable to compel the nonsignatory Counterdefendants to also be bound by the arbitration clause in the entire agreement, and/or 4) mutuality of remedy under the arbitration clause makes it equitable to compel the nonsignatory Counterdefendants to also be bound by the arbitration clause in the entire agreement.

On October 16, 2012, this Court issued its Decision and Order Re: Motion to Stay Arbitration (Exh 21), stating, inter alia, "The Court notes that the relief sought by the plaintiffs is a determination that they are *not* subject to the requirement to arbitrate contained in the Subscription Agreement - if their position is correct, that hardly gives a basis for them to evade any direct liability they may have for consumer protection violations on the record as it currently exists[3], at a minimum, the Court could not address the merits of the claim on this record. * * * Until or unless additional evidence is presented to the Court as provided for by I.R.C.P. 43(e) that would warrant any other conclusion, the only parties which are required to arbitrate are Clearwater 2008 Note Program LLC and Mark Boling." (Underline added.) Based on the Affidavit of Mark Boling such evidence exists to warrant another conclusion and grant this new motion.

---

[3] "The Idaho Rules of Civil Procedure do not recognize "Declarations." Evidentiary submissions for motions are required to be submitted under oath either by way of affidavits or depositions or oral testimony if permitted by the Court or by stipulations of the parties. I.R.C.P. 43(e). The Counterclaim and Third Party Complaint are not verified. Idaho Rules of Evidence 201 does not authorize the Court to take judicial notice of the attachments to the Counterclaim and Third Party Complaint."

STATEMENT OF FACTS

A. Private Placement Memorandum, Supplements One and Two Thereto and Guaranty

On or about February 4, 2010, Claimant received an initial package from Rob Ruebel, Regional Vice-President of Sales of Clearwater Real Estate Investments aka Clearwater Real Estate Investments, LLC ("Clearwater") [4] consisting of A) a bound Confidential Private Placement Memorandum Book # 08Note-A238 dated August 29, 2008 (Exh. 1), which included, inter alia, the Private Placement Memorandum (Exh. 1A ,"PPM"), a Guaranty (Exh. 2), and Supplements One and Two to the PPM (collectively, Exh. 3), and B) a cover letter dated February 1, 2010 and miscellaneous sheets about Clearwater (collectively, Exh. 4). Claimant did not receive a copy of the Note dated August 29, 2008, the Third Supplement to the PPM dated January 20, 2010, or the 2009 Year-End Update dated March 19, 2010 until after the submission and acceptance of his Subscription Agreement, *infra*.

The **PPM** sets forth the following:

> Clearwater 2008 Note Program, LLC, an Idaho limited liability company, was organized to offer up to $20,000,000 in aggregate principal amount of 9.0% Notes due December 31, 2015. The Company will use the proceeds from the offering of the Notes to provide

[4] The cover letter and business card of Mr. Ruebel (Exh 4) identifies Clearwater Real Estate Investments as the business entity providing the initial package. Consulting agreements for RE Capital Investments, LLC and others are made with Clearwater Real Estate Investments, but is executed by Clearwater Real Estate Investments, LLC. [Boling Affdvt., ¶ 49 (c)] Clearwater Real Estate Investments didn't even exist as business entity in Idaho until 7/24/12. [Boling Affdvt., ¶¶ 32, 50] Clearwater Real Estate Investments, LLC never existed as business entity authorized to do business in Idaho. [Boling Affdvt., ¶ 32]

secured financing for real estate acquisition and development projects undertaken by Clearwater REI, LLC, an Idaho limited liability company, its Affiliates and other borrowers who satisfy the lending criteria established by the Company. * * * All loans made by the Company will be collateralized by a first position mortgage or deed of trust, as the case may be. [PPM, Introduction.]

Noteholders may elect, from time to time, to (a) receive monthly distributions of simple interest at the annual rate of 9.0%, or (b) re-invest accrued interest at a compounded annual interest rate of 9.0%. [PPM, Introduction.]

The mailing address of the Company is c/o Clearwater REI, LLC, 1300 E. State Street, Suite 103, Eagle, Idaho 83616. [PPM, Introduction.]

If, after carefully reading the entire Memorandum, obtaining any other information available and being fully satisfied with the results of pre-investment due diligence activities, a prospective Noteholder would like to purchase Notes, a prospective Noteholder should complete and sign the attached Subscription Agreement. The full purchase price for the Notes must be paid by check upon submission of the Subscription Agreement for the Notes. [PPM, p. 3.]

There are various conflicts of interest among the Company, the Manager and their Affiliates. [PPM, p. 5.]

COMPANY'S PRINCIPAL OFFICERS [PPM, p. 17.]: The Investment Committee will include, but not be limited to the following principals:
- Ron Meyer, Chief Development Officer
- Chris Benak, Chief Development Officer
- Don Steeves, National Sales Director & Broker-Dealer Relations
- Bart Cochran, Vice President of Acquisitions & Operations
- Chad Hansen, Vice President of Finance. [PPM, p. 17.]

MANAGER'S KEY MANAGEMENT [PPM, p. 18.]:
- Ron Meyer, Chief Development Officer
- Chris Benak, Chief Development Officer
- Don Steeves, National Sales Director & Broker-Dealer Relations

• Bart Cochran, Vice President Of Acquisitions & Operations
• Chad Hansen, Vice President of Finance

Interest: Noteholders may elect to receive monthly interest payments in an amount equal to 9.0% simple interest on their principal investment. All distributions will paid in arrears on the fifteenth day of each month, beginning with the month following the month in which the Notes are issued. [PPM, p. 19.]
Interest Reinvestment Program (IRP): By giving written notice to the Company of their desire to do so not later than November 30, Noteholders may elect to have their interest reinvested and compounded monthly beginning on the first day of the year immediately following the date on which such notice was received by the Company. Reinvested interest will be compounded at the annual rate of 9.0%. Interest that is reinvested will be added to and considered part of the principal amount of the Note at the end of each calendar month. [PPM, p. 19.]

Liquidity; Callability: Beginning December 31, 2010 and once annually thereafter, Notes representing up to 10% of the original principal amount may be called by the Noteholders upon not less than 90 days written notice to the Company. [PPM, pp. 19-20.]

Guaranty: The Notes will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC [PPM, p. 20.] The Guaranty is attached to the PPM as Exhibit D.

Annual Report: Within 120 days after the end of each calendar year, the Company will send to each
Noteholder of record during the previous year: (a) an audited balance sheet for the Company as of the end of such fiscal year and (b) an audited statement of the Company's earnings for such fiscal year, along with a year-end status report. [PPM, p. 24.]

Definitions:
"Company" means Clearwater 2008 Note Program, LLC, an Idaho limited liability company. [PPM, p. 25.]
"Manager" refers to Clearwater REI, LLC. The Manager is sole owner and the initial manager of the Company. [PPM, p. 26.]
"Noteholders" means purchasers of Notes. [PPM, p. 26.]

> "Notes" means the $20,000,000 aggregate principal amount of 9.0% notes due December 31, 2015, subject to increase to $40,000,000 at the sole discretion of the Company, which will be obligations of the Company the principal of which will be guaranteed by RE Capital Investments, LLC; however, the Notes will not be secured by collateral. [PPM, p. 26.]
>
> "**Event of Default**" refers to the occurrence of any of the following: (a) failure to pay the principal on the Notes when due at maturity, or upon any earlier due date, or upon mandatory redemption at the option of Noteholder, (b) failure to pay any interest on the Notes for ten days after notice of such default to the Company; (c) failure to perform any other covenant for ten days after receipt of written notice specifying the default and requiring the Company to remedy such default; **or** (c) events of insolvency, receivership, conservatorship or reorganization of the Company. [PPM, p. 26.] (Emphasis added.)
> Guarantor's Balance Sheet dated July 31, 2008 – attached Exhibit C to the PPM.

Guaranty dated July 31, 2008 – attached Exhibit D to the PPM, which was signed on behalf of the Guarantor, RE Capital Investments, LLC, by its managing member, Diamond B Asset Management.

The Guaranty states, inter alia:

> "In order to induce each prospective purchaser (each a "Noteholder" and collectively the "Noteholders") of 9% Notes due on December 31, 2015 (each a "Note" and collectively the "Notes) issued by Clearwater 2008 Note Program, LLC (the "Company") to purchase the Notes, the Guarantor hereby unconditionally guarantees the payment of the original principal amount of the Notes as provided therein. This Guaranty shall remain in full force throughout the terms of the Notes."
>
> "Guarantor hereby waives notice of acceptance of this Guaranty and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices to them of default by the Company under the Notes."

> "The Guarantor's net worth will at all times during the term of the Guaranty be maintained at $54, 000.000 subject to increase in pro rata up to $78,000,000 if the Company increases the offering of the Notes."
>
> "Guarantor further agrees, to the extent permitted by law, to pay any costs or expenses, including the reasonable fees of an attorney, incurred by the Noteholders in enforcing this Guaranty."

First Supplement to PPM dated October 3, 2008:

Peter Cooper, Senior Vice-President of Sales will assume the role of Director of Sales and Broker Dealer Relations for Clearwater REI, LLC. Don Steeves, former National Sales Director and Director of Broker Relations, concluded his employment with Clearwater REI, LLC. [1st Suppl., p. 2.]

The four member Investment Committee now consists of current principal members of Clearwater REI, LLC, namely: Ron Meyer, Chris Benak, Bart Cochran and Chad Hansen. No loan will be made by the Company without the prior approval of the Investment Committee. [1st Suppl., p. 3.]

Second Supplement to PPM dated June 30, 2009:

The **RELATIONSHIP** of the Company (Clearwater 2008 Note Program, LLC), the Manager (Clearwater REI, LLC) and the Guarantor (RE Capital Investments, LLC) to each other, and their respective owners, is as follows [2nd Suppl., p.2]:

- RE Capital Investments, LLC owns 55.84% of Clearwater (Real Estate Investments).
  - Ronald D. Meyer owns 100% of Terron Investments, Inc., which owns 50 % of RE Capital Investments, LLC.
  - Christopher J. Benak owns 100% of Diamond B Asset Management, Inc., which owns the other 50% of RE Capital Investments, LLC.

o Barton Cole Cochran 100% of Leap, Inc. which owns 19.58% of Clearwater.

o Chad James Hansen owns 100% of Green Jackets Investments, Inc., which owns 19.58% of Clearwater.

Bart Cochran, who was formerly the Company's Vice-President of Acquisitions & Operations, is now the Company's President. Chad Hansen, who was formerly the Company's Vice-President of Finance, is now the Company's Chief Financial Officer. [2nd Suppl., p.2]

Guarantor's Balance Sheet dated December 31, 2008 – attached as Exhibit A to the 2nd Suppl.

B. Subscription Agreement

On February 12, 2010, Boling executed and submitted a Subscription Agreement ("SA") (Exh. 5), and Boling paid the sum of $50,000 pursuant thereto as his personal investment in the Company's Note Program without having previously received a copy of the Note.

At the time of submitting his executed SA and $50,000 payment, Counterdefendants or their agents or principals had not disclose to Boling that a) Clearwater and Clearwater Real Estate Investments, LLC did not exist as business entities authorized to do business in the state of Idaho, b) RE Capital Investments, LLC (Guarantor) had a 55.84% membership interest and 50% voting interest in Clearwater REI, LLC (Manager), and c) RE Capital Investments, LLC (Guarantor) had a consulting agreement with Clearwater aka Clearwater Real Estate Investments, LLC for $8,500.00 per month.

Subscription Agreement:

The SA is the offer and agreement of the Boling to purchase $50,000 in principal of 9% Notes to be issued by the Company subject to the terms, conditions, acknowledgments, representations and warranties stated herein and in the PPM, as supplemented from time to time. [SA, p.2.]

RE Capital, LLC agreed to guarantee the repayment of principal under the Notes. [SA, p.3., ¶1]

Pertinent portions of the SA are as follows:

> "I acknowledge that I have received, read and fully understand the Memorandum. I acknowledge that I am basing my decision to invest in Notes on the Memorandum and I have relied only on the information contained in said materials and have not relied upon any representations made by any other person." [SA, p.3., ¶2] (underline added)
>
> "I am purchasing Notes for my own account and for investment purposes only." [SA, p.4, ¶7.]
>
> "This Subscription Agreement shall be construed in accordance with and governed by the laws of the State of Idaho without regard to its choice of law provisions." [SA, p.4, ¶10.]
>
> **[ARBITRATION CLAUSE]**
>
> "[A]ny dispute, controversy or other claim arising under, out of or relating to this Agreement or any of the transactions contemplated hereby, or any amendment thereof, or the breach or interpretation hereof or thereof, shall be determined and settled in binding arbitration in Boise, Idaho, in accordance with applicable Idaho law, and with the rules and procedures of The American Arbitration Association. The prevailing party shall be entitled to an award of its reasonable costs and expenses, including, but not limited to, attorneys' fees, in addition to any other available remedies. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives, and judgment

> may be entered thereon in any court of competent jurisdiction. BY EXECUTING THIS AGREEMENT, YOU ARE AGREEING TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE SUCH DISPUTES LITIGATED IN A COURT OR JURY TRIAL, AND YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE. BY EXECUTING THIS AGREEMENT, YOU HEREBY CONFIRM THAT YOUR AGREEMENTS TO THIS ARBITRATION PROVISION IS VOLUNTARY." [SA, p.4, ¶11.]
>
> "[T]his Subscription Agreement and the Memorandum, together with all attachments and exhibits thereto, constitute the entire agreement among the parties hereto with respect to the sale of Notes and may be amended, modified or terminated only by a writing executed by all parties." [SA, p.4, ¶13.]

C. Acceptance of Subscription Agreement, Certificate and Note

On or about March 6, 2010, Boling received a cover letter dated March 1, 2010 (Exh. 6), an Acceptance of the Subscription Agreement (Exh. 5), a Certificate with an effective date of February 27, 2010 (Exh. 7), and a Note dated August 29, 2008 (Exh. 8) from Clearwater.

Acceptance of Subscription Agreement:

On February 26, 2010, Bart Cochran signed the acceptance of the SA, as the Manager for the Company.

Certificate:

Effective February 27, 2010, Certificate No 08-470 with Clearwater Real Estate Investments letterhead was signed by Bart Cochran as the Manager for the Company and issued to Boling.

Note:

A Note dated August 29, 2008, with the Company as the maker, was signed by Bart Cochran as the sole member for the Manager. No Exhibit A, listing the names of the Noteholders, including Boling, was attached or included with the Note that was delivered to Boling.

Pertinent portions of the Note are as follows:

> FOR VALUABLE CONSIDERATION, the receipt, adequacy and sufficiency of which are hereby acknowledged, Clearwater 2008 Note Program, LLC, an Idaho limited liability company ("Maker"), promises to pay to the parties listed on Exhibit A attached hereto (the "Noteholders"), the aggregate principal amount of Twenty Million and 00/100 Dollars ($20,000,000) with the option to increase to Forty Million and 00/100 Dollars ($40,000,000), together with interest, late charges, costs and expenses, and all other amounts described below in accordance with the following terms and provisions:
> Section 1 Definitions.
> "Memorandum" shall mean Maker's Confidential Private Placement Memorandum dated August 18, 2008, as amended or supplemented from time to time, relating to the offer and sale by the Maker of up to $20,000,000 of Notes (subject to increase to $40,000,000).
>
> "Noteholder" shall mean any person or entity hereafter purchasing a Note in accordance with the Memorandum, subject to the provisions of the Transaction Documents applicable thereto, and any successor or assign thereof or entity acquiring an interest herein at any time.
>
> "Transaction Documents" shall mean this Note, the Subscription Agreement and the Memorandum.
>
> Section 2.1 Fixed Interest.
> "Commencing on the date hereof and continuing until December 31, 2015, the outstanding principal hereunder shall bear interest at a fixed annual rate of 9%."
>
> Section 3 Payments; Accrual.
> "Commencing on the fifteenth day of the month next following the Funding Date and continuing on the fifteenth day of the month thereafter until the outstanding principal hereof is paid in full, Maker shall pay to, or

accrue and compound for the benefit of, the Noteholders all unpaid Interest in an amount equal to the product of the principal amount hereunder and that fraction the numerator of which is the Noteholder's principal investment and the denominator of which is the principal amount hereunder. If not sooner paid, Maker shall pay the principal balance hereof in full on the Maturity Date, together with all unpaid accrued interest. Maker shall make all payments of Interest, late charges, and principal to the Noteholders at their respective addresses on file with the Maker as of the day which is ten days prior to the due date of such payment, on or before the date when due, without notice, deduction or offset. All payments shall be made in lawful money of the United States of America."

Section 5 Put Rights.
"Beginning December 31, 2010 and once annually thereafter, up to 10% of the original principal amount may be called by the Noteholders upon not less than 30 days written notice to the Maker."

Section 6 Late Charges.
" * * * Maker therefore agrees that a late charge equal to 5% of each payment of Interest or principal that is not paid within 10 days after its due date is a reasonable estimate of fair compensation for the loss or damages to the Noteholders will suffer. Further, Maker agrees that such amount shall be presumed to be the amount of damages sustained by Noteholders in such case, and such sum shall be added to amount then due and payable."

Section 8.1 Events of Default:
"Any of the following occurrences shall constitute an "Event of Default" under this Note: (a) failure by Maker to make any payment of Interest on or principal of this Note on or before the twenty-fifth (25^{th}) day of the month first becoming due in accordance with the terms of this Note, without any notice or demand for payment (a "Payment Default"); * * *."

Section 8.2 Remedies.
"Upon any Event of Default under this Note and the expiration of any applicable notice or cure periods: (a) the entire unpaid principal balance hereof , any accrued but unpaid Interest, late charges, and all other amounts owing under this Note, shall, at the option of the Noteholders, without further notice or demand of any

> kind to Maker or any other person, become immediately due and payable; and (b) Noteholders shall have and may exercise any and all rights and remedies available at law, by statute, or in equity.
> The remedies of the Noteholders, as provided in this Note, shall be cumulative and concurrent and may be exercised singularly, successively, or together, at the sole discretion of the Noteholders, as often as occasion therefor shall arise. No act of omission or commission by the Noteholders, including specifically any failure to exercise any right, remedy or recourse, shall be deemed a waiver or release to be effected only through a written documents executed by the Noteholders. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of, any subsequent right, remedy, or recourse to collateral as to any subsequent event."

D. Subsequent Communications to Boling

On or about March 19, 2010, Clearwater sent to the Boling by mail a 2009 Year-End Update (Exh. 9) to keep the investors informed of the status of the Note Program. The 2009 Year-End Update letter states, "the assets of RE Capital, the guarantor, are being maintained at sufficient levels to allow us to meet our obligations." This 2009 Year-End Update revealed information regarding the update and current strategy of the various loans made by Counterdefendants prior to Boling's investment. Two of the four loan projects were in default and/or in bankruptcy. The other two loan projects were having delays in the entitlement process.

On or about June 17, 2010, the Company disclosed its Independent Auditor's Report and Financial Statements for the calendar years 2008 and 2009 (Exh. 10).

On or about March 24, 2011, Clearwater sent to the Boling by mail a 2010 Year-End Update (Exh. 11) to keep the investors informed of the status of the Note Program. Now, all five (5) outstanding loans were in default.

On or about August 19, 2011, the Company disclosed its Independent Auditor's Report and Financial Statements for the calendar years 2009 and 2010 (Exh. 12). The Company is solely owned by the Manager. The Company maintained a separate allowance for each loan receivable. At December 31, 2010, the Company had an allowance for losses of $2,311,584. In 2010, the Company suspended early redemption requests.

On or about October 26, 2011, the Company sent by mail a Notice to Note Holders (Exh. 13), which was received by Boling on November 4, 2011. The Notice states, "Note Holders can be optimistic of the collateral position of the Note Program today." The Notice further states that the amount of the interest payment distribution would be reduced for the months of November 2011, December 2011 and January 2012 and reassessed for February 2012.

On November 6, 2011, Boling sent the Company written notice to redeem 10% of his principal amount under the Transaction Documents and requested a current Balance Sheet of the Guarantor (Exh. 14 – Email String/Letters). The last Balance Sheet of the Guarantor disclosed to the Boling was dated December 31, 2008.

On November 10, 2011, Clearwater acknowledged receipt of Boling's liquidation request, placed Boling's request on a *priority list* with an acceptance date of November 7, 2011 and informed Boling that all liquidation requests have been suspended (Exh. 14 – Email String/Letters). Clearwater stated that it "has made multiple attempts to get updated financials from RE Capital (Guarantor) and we have received word that we should have updated financials no later than year end 2011."

On December 1, 2011, Boling *first* obtained by email and reviewed a copy of the Third Supplement to the PPM dated January 20, 2010 from Ross Farris, Director Marketing and Investor Relations for Clearwater. (Exh. 15)

The **Third Supplement to the PPM** states, inter alia, "[a]lthough the Guarantor's net worth of approximately, $53.4 million is lower than the net worth of $54 million it has covenanted to maintain under the Guaranty based on a Maximum Offering Amount of $20,000,000, in the event that the increased Maximum Amount of $21,900,000 is attained, the Guarantor's net worth does provide a principal coverage ratio of: (a) 1.2x, if a portion of the Guarantor's net worth is reserved to provide 1.5x coverage over principal amounts outstanding under the notes issued by Clearwater 2007 Notes Program, LLC .(the "2007 Notes Program") (accounting for liquidation of $2,000,000 in principal amounts of the notes issued by the 2007 Notes Program as of December 31, 2009, with $18,000,000 remaining outstanding), and (b) 2.44x, if this reserve is not made (the Guarantor is not required to make this reserve). Attached as Exhibit A to the Third Supplement to the PPM was the RE Capital Balance Sheet dated December 31, 2009.

Counterdefendants did not complete the 2010 Balance Sheet for RE Capital (Guarantor) and no efforts were made to create a balance sheet for RE Capital for the 2011 calendar year. [Boling Affdvt., ¶¶ 46-47]

On December 14, 2011, Boling received a letter from the Company stating that 1) the security for the loans were not cross-collateralized, 2) the Manager decides exclusively when to get appraisals for the Projects, 3) the 2010 Audited Report and financials of the Company were purportedly first available on May 1, 2011, 4) the initial PPM packet included the Third Supplement to the PPM, the Company has requested a

final 2010 Balance Sheet from the Guarantor, and 5) the Company "cannot honor the liquidation requests of a few Note Holders at the expense of the other Note Holders." (Exh. 14 – Email String/Letters)

On December 20, 2011, Boling spoke by telephone with Lori Fischer, Controller of Clearwater, who informed Boling that the 2010 Audited Report and financials of the Company were first available on or after August 29, 2011.

On December 20, 2011, Boling stated in an email to Clearwater: "If the Company maintains now and at the time of the initial PPM that it can alter or over-ride this expressed term regarding Callability on the basis that it has an obligation to ALL Note holders allowing the Company not to abide by this expressed term, then I would request that my subscription be immediately rescinded and the total principal amount of my note be restored." (Exh. 14 – Email String/Letters)

On or about January 12, 2012, Clearwater sent a letter to Note Holders postponing all 2011 liquidation requests until further notice. (Exh. 16)

On or about January 25, 2012, the Company sent a letter to Boling stating that it has "been in contact with RE Capital and are hopeful of receiving correspondence from them in the next 30 days. (Exh. 14 – Email String/Letters)

On February 2, 2012, Ross Farris, Director of Marketing and Investor Relations for Clearwater informed Boling by telephone that the reduction of interest payment was made pursuant to Section 3 of the Note and the suspension of liquidation rights was to protect all Noteholders. Boling informed Mr. Farris that he never received a copy of the Note until after submitting his Subscription Agreement and $50,000 payment to the Company. Boling requested a copy of Exhibit A to the Note. Mr. Farris responded that he would obtain a copy of Exhibit A to the Note, but only with Boling's name on it and

not the identity of all Noteholders. No Exhibit A to the Note was ever received by Boling.[5] Mr. Farris also stated that all the business decisions for the Note Program are made by the management team of Clearwater REI, LLC. [6]

On February 2, 2012, Boling sent to Clearwater by email a written Notice of Default on Interest payments for November 2011, December 2011, and January 2011, and a written Notice of Default on his liquidation rights and demanding that payment be made immediately or after a cure period, if necessary. (Exh. 14 – Email String/Letters)

On February 6, 2012, Boling received from Clearwater a cover letter and January Update dated January 31, 2012. (Exh. 17) The cover letter states: "the February payment will be 25% of the monthly interest distributed." The Update acknowledges: "Real Estate values have fallen dramatically nationwide."

On February 9, 2012, Boling received from Clearwater a Quarterly Statement ending December 31, 2011 (Exh 18) that sets forth the "Total Outstanding Principal of Master Promissory Note to Investors" as $21,810,000 and "Total Appraised Value of Collateral" as $25,100,000 and "Collateral valuations dated September 15, 2010, January 19, 2011 and September 21, 2011."

If Boling was timely made aware of the aforementioned facts, Boling would not have made his $50,000 investment in the Note Program. [Boling Affdvt., ¶ 30]

On February 15, 2012, out of abundance of caution, Boling filed a Demand for Commercial Arbitration with the American Arbitration Association ("AAA") against all

---

5 Exhibit A to the Note never existed. [Boling Affdvt., ¶ 48]

6 Farris would seek approval from the Company officers before disseminating correspondences about the Note Program. [Boling Affdvt., ¶49 (e)]

named Counterdefendants and the Company and served said parties therewith regarding the acts and omissions set forth herein under the arbitration clause in the SA.

On March 8, 2012, Counterdefendants filed with the AAA and served their Answer Statement objecting to arbitrate the disputes set forth in the counterclaim and third party complaint on behalf of all named Counterdefendants, but not the Company.

Based on Counterdefendants' actionable conduct, Boling seeks monetary and/or equitable relief in his counterclaim alleging 1) violations of the Idaho Consumer Protection Act [*Idaho Code* ("I.C.") §§ 48-601 – 48-619 ("ICPA")] against all Counterdefendants, and each of them, and 3) Breach of Guaranty against the Counterdefendant Clearwater REI, LLC.

On or about August 17, 2012, Counterdefendants filed a Motion to Stay Arbitration in this case and denied the existence of the agreement to arbitrate.

On October 16, 2012, this Court rejected Boling's declaration and issued its Decision and Order Re: Motion to Stay Arbitration (Exh 21), stating, inter alia, "The Court notes that the relief sought by the plaintiffs is a determination that they are *not* subject to the requirement to arbitrate contained in the Subscription Agreement - if their position is correct, that hardly gives a basis for them to evade any direct liability they may have for consumer protection violations on the record as it currently exists, at a minimum, the Court could not address the merits of the claim on this record. * * * **Until or unless** additional evidence is presented to the Court as provided for by I.R.C.P. 43(e) that would warrant any other conclusion, the only parties which are required to arbitrate are Clearwater 2008 Note Program LLC and Mark Boling." (bold and underline added)

RIGHT TO COMPEL ARBITRATION

On application of a party showing an agreement described in section 7-901,

Idaho Code, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied. *I.C.* § 7-902 (a).

If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subdivision (a) of this section, the application shall be made therein. Otherwise and subject to section 7-918, Idaho Code, the application may be made in any court of competent jurisdiction. *I.C.* § 7-902 (c).

"Arbitrability is a question of law to be decided by the court." (emphasis added) *Mason v. State Farm Mut. Auto Ins. Co.* (2007) 145 Idaho 197, 200. Once the Counterdefendants objected to the arbitration demand with the AAA on the basis of not being signatories to the agreement containing an arbitration clause, the American Arbitration Association did not have jurisdiction to arbitrate the matter as to the objecting Counterdefendants because the issue is for the courts, and not the arbitrator, to decide whether Boling can compel arbitration.

A strong public policy favors arbitration. See, e.g., *Bingham County Comm'n v. Interstate Elec. Co.* (1983) 105 Idaho 36, 40. Agreements to arbitrate are encouraged and given explicit recognition as effective means to resolve disputed issues. *Loomis, Inc. v. Cudahy* (1983) 104 Idaho 106, 108. A court reviewing an arbitration clause will order arbitration unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts are to be

resolved in favor of coverage. See, *Int'l Ass'n of Firefighters, Local No. 672 v. City of Boise* (2001) 136 Idaho 162, 168.

Whether an arbitration clause in a contract requires arbitration of a particular dispute or claim depends upon its terms. *Lovey v. Gregence BlueShield of Idaho* (2003) 139 Idaho 37, 46. In the instant case, the arbitration clause in the Subscription Agreement [SA, p.4, ¶11] covers "any dispute, controversy or other claim arising under, out of or relating to this Agreement or any of the transactions contemplated hereby, or any amendment thereof, or the breach or interpretation hereof or thereof. . . ." The broad language of the arbitration clause would encompass Boling's Breach of Guaranty and ICPA violations claims against the nonsignatory Counterdefendants because these claims and nonsignatory parties relate to the formation and performance of the entire agreement that is in dispute. See, *Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc.* (2005) 142 Idaho 235, 240 – "language is broad enough to include claims under the ICPA ." (underline added)

Any reliance on *Lewis v. CEDU Educational Servs., Inc.* (2000) 135 Idaho 139 and *Rath v. Managed Health Network, Inc.* (1992) 123 Idaho 30 is without merit because the language of the arbitration clauses therein was limited to the parties.

In *Lewis*, the court held that the arbitration provision only applied to the contracting parties, not the third party beneficiaries, because the *narrow* language of the arbitration provision limited arbitration to "any controversy between the parties" and "of the parties hereto." *Lewis*, 135 Idaho at 143.

In *Rath*, the court held that although the Raths were third party beneficiaries to the contract, the express language of the arbitration clause of the contract was *limited* to "parties" to the agreement. *Rath*, 123 Idaho at 31. The court reasoned that to hold

otherwise would be "inapposite in the face of the language in the Agreement expressly limiting the arbitration clause to the 'parties' to the Agreement." *Ibid.*

In the instant case, Counterdefendants filed this action denying the existence of the agreement to arbitrate against them. However, there is nothing in the entire agreement that expressly limits the arbitration clause to the parties or excludes nonsignatory parties from arbitration.

The Idaho Supreme Court has noted that the distinction between state and federal substantive arbitration law is largely a distinction without a difference because the applicable legal principles are one and the same. *Mason v. State Farm Mut. Auto Ins. Co.* (2007) 145 Idaho 197, at 200 n.1.

The federal courts have identified five theories pursuant to which an arbitration clause can be enforced by or against a nonsignatory: "1) incorporation by reference; 2) assumption; 3) agency; 4) veil-piercing/alter ego; and 5) estoppel." *Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 268, quoting *Thomson-CSF, S.A. v. American Arbitration Ass'n.* (2nd Cir. 1995) 64 F.3d 773, 776.

With respect to the Breach of Guaranty claim, the Subscription Agreement states: "this Subscription Agreement and the Memorandum, together with all attachments and exhibits thereto, constitute the entire agreement among the parties hereto with respect to the sale of Notes and may be amended, modified or terminated only by a writing executed by all parties." [SA, p.4, ¶13] The Guaranty is attached as Exhibit D to the PPM and as *incorporated by reference* in the Subscription Agreement. Thus, it becomes part of the entire agreement and the guarantor, Counterdefendant RE Capital Investments, LLC, is bound by the arbitration clause in the entire agreement.

RE Capital Investments, LLC (the Guarantor) is *wholly-owned* by businesses

whose sole ownership is either Counterdefendants Ron Meyer and Chris Benak, who are also officers of the Company. As officers of the Company and the principals of the Guarantor, the knowledge of Mssrs. Meyer and Benak that the Guaranty has been made a part of the entire agreement, *supra*, is imputed to RE Capital Investments, LLC (the Guarantor). RE Capital also owns 50% of the Manager entity. [Boling Affdvt., ¶49 (d)] Thus, the Guarantor is bound by that knowledge and consents to the arbitration clause contained in the Subscription Agreement.

With respect to the ICPA violations claim, the court should apply the arbitration clause because the nature of Boling's ICPA claims against the nonsignatory Counterdefendants is interwoven with the breach of their the duties and obligations under the entire agreement, which includes the arbitration clause. See *Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc.* (11th Cir. 1993) 10 F.3d 753, 757-758 – re equitable estoppel and claims intertwined with contractual obligations. Because the claims are cast in tort rather than contract does not avoid the arbitration clause. (*Sunkist, supra,* 10 F.3d at p. 758.)

Also, the incestuous operation of the individual corporate officers and their web of interlocking business entities under the umbrella of the "Clearwater" name creates an oneness of activity to invoke the doctrine of equitable estoppel[7] and an agency relationship[8] with respect to each significant business decision made by the named

---

[7] Under the **doctrine of equitable estoppel**, claims against the nonsignatory must be dependent upon, or founded in and inextricably intertwined with, the underlying contractual obligations of the agreement containing the arbitration clause. *Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010)186 Cal.App.4th 696, 715 – citing *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 217-218.

[8] When contracting parties agree to arbitrate all disputes "under or with respect to" a contract (as they did here), they generally intend to include disputes about their

individuals Counterdefendants for the Note Program, Company and Manager under the entire agreement and to the detriment of the Boling in violation of the ICPA. Thus, the nonsignatory parties are bound by the broad arbitration clause in the entire agreement.

The ICPA is a remedial statute, and is to be construed liberally in order to deter deceptive or unfair trade practices and to provide relief for consumers exposed to proscribed practices. I.C. § 48-601[9]; *In re Wiggins* (2001) 273 B.R. 839, 855; *In re Edwards* (1999) 233 B.R. 461, 470; *Fenn v. Noah* (2006) 142 Idaho 775, 780.[10] The ICPA is applicable to commercial transactions. *Myers v. A.O. Smith Harvestore Products, Inc.* (1988) 114 Idaho 432, 441.

The following unfair methods of competition and unfair or deceptive acts or

---

agents' actions because "[a]s a general rule, the actions of a corporate agent on behalf of the corporation are deemed the corporation's acts." If arbitration clauses only apply to contractual signatories, then this intent can only be accomplished by having every officer and agent (and every affiliate and its officers and agents) either sign the contract or be listed as a third-party beneficiary. *In re Merrill Lynch Trust Co. FSB* (Tex., 2007) 235 S.W.3d 185, 189.

Rowe v. Exline (2007)153 Cal.App.4th 1276, 1285 - A nonsignatory who is the agent of a signatory can even be *compelled* to arbitrate claims against his will. See also, *Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc.* (2005) 142 Idaho 235, 241 – a signatory's agent was entitled to enforce an arbitration clause, citing *Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759.

[9] The purpose of these Idaho consumer protection statutes are strikingly similar in Legislative content with the California Consumer Legal Remedies Act [*Cal. Civil Code* §1760].

[10] It is the intent of the legislature that in construing this act due consideration and great weight shall be given to the interpretation of the federal trade commission and the federal courts relating to section 5(a)(1) of the federal trade commission act (15 U.S.C. 45(a)(1)), as from time to time amended. I.C. § 48-604 (1). Federal case law as it has developed under Federal Trade Commission Act, although not binding, is **persuasive in application of Idaho Consumer Protection Act**. Federal Trade Commission Act, §§ 1 et seq., 5(a)(1), 15 U.S.C.A. §§ 41 et seq.,45(a)(1); *I.C.* §§ 48-601 to 48-619. *State ex rel. Kidwell v. Master Distributors, Inc.* (1980) 101 Idaho 447, 453.

practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a PERSON knows, or in the exercise of due care should know, that he has in the past, or is: Obtaining the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed (I.C. § 48-603 (12)); Failing to deliver to the consumer at the time of the consumer's signature a legible copy of the contract or of any other document which the seller or lender has required or requested the buyer to sign, and which he has signed, during or after the contract negotiation (I.C. § 48-603 (13)); Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer. I.C. § 48-603 (17). The Counterdefendants are allegedly such persons.

Boling contends, *inter alia*, that 1) Counterdefendants violated *I.C.* § 48-603 (17) based on their initial failure to timely provide Boling with the Note, the Third Supplement to the PPM, and the 2009 Year-End Update, and Counterdefendants' failure to conspicuously disclose in a timely manner the material facts that a) Clearwater and Clearwater Real Estate Investments, LLC did not exist as a business entities authorized to do business in the state of Idaho, b) RE Capital Investments, LLC (Guarantor) had a 55.84% membership interest and 50% voting interest in Clearwater REI, LLC (Manager), and c) Benak, Meyer and RE Capital Investments, LLC (Guarantor) had consulting agreements with Clearwater aka Clearwater Real Estate Investments, LLC for $8,500.00 per month; 2) Counterdefendants violated *I. C.* § 48-603 (17) during the course of the Note Program because the Counterdefendants failed to timely and conspicuously disclose material facts as to the deteriorating financial condition of the Note Program's loan portfolio, the inability or refusal of the Company to pay interest or redeemable principal, and the Guarantor's unsatisfactory net worth

and cash position; 3) Counterdefendants violated *I.C.* §48-603 (17) based on their failure to timely provide the 2010 audited reports and financials for the Company and Guarantor's Balance Sheet for 2010 and 2011; 4) Counterdefendants violated *I.C.* § 48-603 (17) because the 10/26/11 Notice to Note Holders (Exh. 13) had a tendency to mislead the Noteholders, including Boling; 5) Counterdefendants violated *I. C.* § 48-603 (12) and/or (13) based on their failure to provide Boling with a copy of the Note at the time of providing the PPM and Boling submitting and acceptance by the Company of the executed Subscription Agreement; and/or 6) Counterdefendants violated *I. C.* § 48-603 (13) based on their failure to provide Boling with Exhibit A to the Note, which was to list of all existing Noteholders, including Boling, at the time of providing the Note. Further evidence/argument will be presented at time of arbitration on the merits.

Boling's claim for ICPA violations against all Counterdefendants are covered under the entire agreement, which includes the broad arbitration clause, because 1) Counterdefendants' conduct is inextricably interwoven with the formation and performance of the entire agreement, 2) a benefit was conferred on the nonsignatory Counterdefendants (s) as a result of the agreement based on the broad language of the arbitration clause to include all claims "arising under, out of or relating to this Agreement or any of the transactions contemplated hereby" and Counterdefendants accepting the fruits of the agreement, which are the loan proceeds used in part to operate Counterdefendants' related businesses and pay compensation to the individual Counterdefendants, making the nonsignatory Counterdefendants a third party beneficiary of the arbitration agreement,[11] 3) a preexisting relationship existed between

[11] "Most, if not all, of the loans to be made by the Company with the proceeds of this Offering will be made to Affiliates of the Company and the Manager." [PPM, p.12.]

the nonsignatory Counterdefendants and the Company based on the individual Counterdefendants acting in the capacity of agents, officers or employees of the Company and the other business entity Counterdefendants acting as the agent for the Company, making it equitable to compel the nonsignatory Counterdefendants (s) to also be bound by the arbitration clause in the entire agreement,[12] *and/or* 4) a mutuality of remedy under the arbitration clause makes it equitable to compel the nonsignatory Counterdefendants to also be bound by the arbitration clause in the entire agreement.[13]

CONCLUSION

Boling has submitted in support of this motion admissible evidence that includes newly discovered evidence in discovery on a new and different motion that warrants a different conclusion to the Court's 10/16/12 ruling. Based on the foregoing, Boling respectfully requests that the Court compel arbitration against Counterdefendants, and each of them, based on Boling's initial demand for arbitration filed with the AAA on February 15, 2012.

Dated: December 6, 2012

Mark Boling

MARK BOLING,
Defendant/Counter-Claimant/Third Party Plaintiff

"The Company, the Manager and their Affiliates are entitled to receive certain significant fees and other significant compensation, payments and reimbursements from the sale of the Notes." [PPM, p.13.] See also, Boling Affdvt, ¶ 49 (a-d).

[12] A nonsignatory who is the agent of a signatory can even be *compelled* to arbitrate claims against his will. *Harris v. Superior Court* (1986) 188 Cal.App.3d 475, 477-479.

[13] "[I]f there were no mutuality of remedy requirement, the seller--which is usually the offeree in the real estate sales context--would have absolutely no incentive to initial the arbitration provision and thereby bind itself to arbitrate disputes." *Marcus & Millichap Real Estate Investment Brokerage Co. v. Hock Investment Co.* (1998) 68 Cal.App.4th 83, 91, fn. 6.

Clearwater REI, LLC, et al. v. Boling, Case No. CV OC 1208669

CERTIFICATE OF SERVICE

I certify on December 6, 2012, I served the following document(s) in this action:

- **DEFENDANT/COUNTER-CLAIMANT'S MOTION TO COMPEL ARBITRATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
- **AFFIDAVIT OF MARK BOLING IN SUPPORT OF DEFENDANT/COUNTER-CLAIMANT'S MOTION TO COMPEL ARBITRATION**

by sending a true copy thereof by **ELECTRONIC SERVICE** pursuant to *I.R.C.P*, Rule 5 (b) (E) addressed to the party(s) served as follows:

Rebecca A. Rainey – rar@raineylawoffice.com
Attorney for Plaintiffs and Counterdefendants Clearwater REI, LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak and Rob Ruebel.

The transmission of said document(s) to each party served was reported as complete and without error within a reasonable time after said transmission.

Dated: December 6, 2012

Mark Boling
MARK BOLING

** INBOUND NOTIFICATION : FAX RECEIVED SUCCESSFULLY **

TIME RECEIVED	REMOTE CSID	RATION	PAGES	STATUS
December 31, 2012 11:46:08 AM MST	9495887078	64	2	Received

12/31/2012 11:45 9495887078 M BOLING PAGE 01/02

ORIGINAL

NO. _____ FILED
A.M. _____ P.M. 12

DEC 31 2012

CHRISTOPHER D. RICH, Clerk
By KATHY BIEHL
Deputy

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630
(949) 588-9222
(949) 588-7078 [fax]
maboling@earthlink.net
Defendant/Counter-Claimant/Third Party Plaintiff, in pro se

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT

FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, et al.
Counterdefendants/Counter-Defendants,
vs.
MARK BOLING,
Defendant/Counter-Claimant

AND RELATED ACTIONS

Case No.: CV OC 1208669

NOTICE OF HEARING ON DEFENDANT/COUNTER-CLAIMANT'S MOTION TO COMPEL ARBITRATION

[Request for Telephonic Appearance – *I.R.C.P.*, Rule 7 (b) (4), if Oral Argument Requested and Granted]

PLEASE TAKE NOTICE that Defendant/Counter-Claimant/Third Party Plaintiff Mark Boling, in pro se, will call up for hearing his Motion to Compel Arbitration, before the above-entitled Court on February 6, 2013, at 2:00 p.m., or as soon thereafter as the matter may be heard, at the Ida County Courthouse, Honorable Deborah Bail, judge presiding, located at 200 W. Front St., Boise, ID.

This Notice is filed in relation and addition to the Notice Of Motion And Defendant/Counter-Claimant's Motion To Compel Arbitration; Memorandum Of Points And Authorities In Support Thereof filed on December 10, 2012.

Dated: December 31, 2012

Mark Boling
MARK BOLING,
Defendant/Counter-Claimant/Third Party Plaintiff

Clearwater REI, LLC, et al. v. Boling, Case No. CV OC 1208669

CERTIFICATE OF SERVICE

I certify on December 31, 2012, I served the following document(s) in this action:

- **NOTICE OF HEARING ON DEFENDANT/COUNTER-CLAIMANT'S MOTION TO COMPEL ARBITRATION**

by sending a true copy thereof by **ELECTRONIC SERVICE** pursuant to *I.R.C.P*, Rule 5 (b) (E) addressed to the party(s) served as follows:

Rebecca A. Rainey – rar@raineylawoffice.com
Attorney for Plaintiffs and Counterdefendants Clearwater REI, LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak and Rob Ruebel.

The transmission of said document(s) to each party served was reported as complete and without error within a reasonable time after said transmission.

Dated: December 31, 2012

Mark Boling
MARK BOLING

Bail
Tara
1-31-13
SR

A.M. FILED P.M. 4:44

JAN 30 2013

CHRISTOPHER D. RICH, Clerk
By ELYSHIA HOLMES
DEPUTY

Rebecca A. Rainey, ISB No. 7525
RAINEY LAW OFFICE
910 W. Main St. Ste. 258
Boise, ID 83702
Phone: (208) 258-2061
Facsimile: (208) 473-2952
rar@raineylawoffice.com

Attorneys for Plaintiffs/Counterdefendants Clearwater REI, LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak, and Rob Ruebel

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, an Idaho limited liability company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONALD D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; ROB RUEBEL, an individual; RE CAPITAL INVESTMENTS, LLC, a Delaware limited liability company,

Plaintiffs/Counterdefendants,

vs.

MARK BOLING, an individual,

Defendant/Counterclaimant.

MARK BOLING, an individual,

Third Party Plaintiff,

vs.

CLEARWATER REAL ESTATE INVESTMENTS, LLC, a Delaware limited liability company

Third Party Defendant.

Case No.: CV OC 12-08669

MEMORANDUM IN OPPOSITION OF MOTION TO COMPEL ARBITRATION

COME NOW Counterdefendants Clearwater REI, LLC, Bart Cochran, Chad Hansen, Ron Meyer, Chris Benak and Rob Ruebel and hereby file their memorandum in opposition to counterclaimant's motion to compel arbitration:

INTRODUCTION

Boling's motion to compel arbitration should be denied for the very simple reason that the counterdefendants in this matter are not parties to the arbitration agreement and because Boling has otherwise failed to allege and prove any theory existing under Idaho contract law that would allow the provisions of the arbitration agreement to be enforced against the non-signatory counterdefendants. Additionally, Boling has otherwise waived his right to compel arbitration because he has substantially invoked the litigation process by filing substantive counterclaims—which are, indeed, the only claims in this matter seeking affirmative relief—and by engaging in substantial discovery. Boling's inconsistent positions with respect to whether he wishes to litigate or arbitrate his claims against counterdefendants are a waste of judicial resources. For these reasons that follow, Boling's motion to compel arbitration should be denied.

ARGUMENT

1. **Where the issue is whether an agreement to arbitration exists between the parties, the presumption in favor of arbitration does not apply.**

Contrary to Mr. Boling's suggestion, a presumption in favor of arbitration does not apply when a Court is determining whether the parties have agreed to arbitration and, accordingly, should not apply in this matter. In any matter involving whether an arbitration provision can or should be enforced, there are two questions that must be answered: first, whether the parties have entered into a valid arbitration agreement and, second, whether the issue in dispute is referable to arbitration under the parties' agreement. *Mason v. State Farm*

Mut. Auto. Ins. Co., 145 Idaho 197, 200, 177 P.3d 944, 947 n.1 (2007) (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995)); accord *Vera v. Saks & Co.*, 335 F.3d 109, 117 (2d Cir. 2003) (noting the Second Circuits express recognition that this is a two part test). Both parts of this test must be resolved under applicable state law: "[S]tates apply general state law principles of contract interpretation to resolve the issue whether the parties entered into a valid and enforceable written agreement to arbitrate ...." *Mason v. State Farm Mut. Auto. Ins. Co.,* 145 Idaho 197, 200, 177 P.3d 944, 947 n.1 (2007) (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995)); see also *Granite Rock Co. v. Int'l Bhd. Of Teamsters,* 130 S.Ct. 2847, 2857-58 (2010) ("courts should order arbitration of a dispute only where the court is satisfied that neither the formation of the parties' arbitration agreement nor its enforceability or applicability to the dispute is in issue. Where a party contests either or both matters, "the court" must resolve the disagreement") (internal citations omitted).

The presumption in favor of arbitration (Motion to Compel Arb. at 20 (citing *Int'l Ass'n of Firefighters, Local No. 672 v. City of Boise*, 136 Idaho 162, 168 (2001)) does not apply when litigants claim they are not parties to an arbitration agreement. Rather, the presumption applies only when the dispute involves whether an **issue** is referable to arbitration; where the dispute is regarding whether the parties have agreed to arbitration, the presumption does not apply. *See, e.g., Applied Energetics, Inc. v. NewOak Capital Mkts., LLC*, 645 F.3d 522, 526 (2d Cir. 2011) (overruling order granting motion to compel arbitration because it was based on presumption in favor of arbitration rather than on application of relevant state law contract principals). This is because arbitration agreements are to be as enforceable as other contracts, but not more so. *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 293-94 (2002). Accordingly, the policy in favor of arbitration agreements "does not require parties to arbitrate when they have not agreed to do

so." *Id.* (citing *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 n9 (1989).

The present action was filed by counterdefendants because they are not parties to the arbitration agreement that Boling seeks to enforce. Counterdefendants have never argued or alleged that Boling's ICPA claims are not subject to arbitration; rather, they claim only that they are not subject to the arbitration agreement contained in the Subscription Agreement because only Boling and Clearwater 2008 Note Program, LLC are parties to that agreement. Indeed, Clearwater 2008 Note Program, LLC, the only party to the agreement containing the arbitration clause, is not a party to the present lawsuit because it recognizes that the ICPA claims are properly referable to arbitration. Because the counterdefendants oppose arbitration on the grounds that they were not parties to the arbitration agreement, the presumption in favor of arbitration does not apply.

2. State contract law governs whether a non-party can be forced to arbitration.

State contract law, and not a federal substantive law of arbitration, provides the correct rules of decision for determining whether non-signatories can be compelled to arbitrate a dispute against their will. In the motion to compel, Boling argues and cites authority supporting the proposition that federal substantive law of arbitration governs whether non-signatories can be compelled to arbitration. Motion to Compel at 21 (citing *Boucher v. Alliance Title Co., Inc.*, 127 Cal. App. 4th 262, 268 (2005) (quoting *Thomson-CSF, S.A. v. American Arbitration Ass'n*, 64 F.3d 773, 776 (2d Cir. 1995) for the proposition that federal courts have recognized "five theories pursuant to which an arbitration clause can be enforced by or against a nonsignatory ....")).

While there is some authority supporting Boling's argument that federal substantive law of arbitration provides the correct rules of decision for the present motion, that authority has been abrogated by *Arthur Anderson v. Carlisle*, 556 U.S. 624, 631-32 (2009), a decision that made it clear that there is no federal substantive law of arbitration and that state contract law governs whether non-signatories can be compelled to arbitration:

> As we have already mentioned, "traditional principles of state law" may allow "a contract to be enforced by or against nonparties to the contract through assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel." (citation omitted). Many of [the 11th Circuits] decisions involving the question of whether a non-party can enforce an arbitration clause against a party have not made clear that the applicable state law provides the rule of decision for that question. (multiple citations omitted). However, the Supreme Court's 2009 decision in Carlisle, which postdates all of those decisions of [the 11th Circuit] clarifies that state law governs that question, and to the extent any of our earlier decisions indicate to the contrary, those indications are overruled or at least undermined to the point of abrogation by Carlisle. (citation omitted).

Lawson v. Life of the South Ins. Co., 648 F.3d 1166, 1170-71 (11th Cir. 2011); accord *THI of New Mexico at Hobbs Center, LLC v. Patton*, 2012 U.S. Dist. LEXIS 5252, *20 (D.N.M. January 3, 2012) ("Consequently, in the wake of *Carlisle,* courts must look to state law relating to contracts in general to determine who may be bound to an arbitration provision."); *Awuah v. Coverall N. Am., Inc.* 2012 U.S. App. LEXIS 2646 (1st Cir. Dec. 27, 2012) ("'[T]raditional principles' of state law allow a contract to be enforced by or against nonparties to the contract through 'assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel . . . .'" (quoting *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631, 129 S. Ct. 1896, 173 L. Ed. 2d 832 (2009)).

Because Boling has incorrectly relied on authority speaking to the federal substantive law of arbitration, rather than properly relying on Idaho state contract law, he has failed to point this Court to controlling authority upon which it can resolve the present dispute. To the extent that Boling does rely on Idaho cases, he has still failed to support his position. First, the case of *Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc.*, was decided under Michigan law, not Idaho law. 142 Idaho 235, 241-43, 127 P.3d 138, 144-46 (2005). Second, in his attempts to distance himself from the adverse decisions of *Rath* and *Lewis*, he advances a novel principal of contract law which has never been recognized in Idaho and which must be rejected.

In his motion to compel, while arguing that *Rath* and *Lewis* do not apply, Boling appears to argue that if a contractual term does not explicitly state that it applies only to the parties to an agreement, then it can be enforced against non-parties. Motion to Compel at 20-21 ("However, there is nothing in the entire agreement that expressly limits the arbitration clause to the parties or excludes nonsignatory parties from arbitration.") (emphasis in original). To the extent that Boling suggests that a contractual agreement can be enforced against non-signatory third-parties unless the contract specifies that it applies only to the parties, Boling has turned contract law on its head and the interpretation resulting from this negative pregnant must be rejected.

Whether a contract may be enforced by or against non-signatory third parties rests solely on principals of state contract law. Accordingly, the arbitration provision can be enforced against the non-signatory counterdefendants only if Boling can establish a theory under Idaho state contract law that binds a non-signatory to the terms of a contract.

3. Boling has failed to prove that any Idaho state law contractual theory would allow the contract to be enforced against the non-signatory counterdefendants.

In support of his motion to compel arbitration, Boling lists five separate contractual theories which, if proved under Idaho state law, would provide a basis for enforcing the arbitration agreement against the non-signatory counter defendants. These five theories include (1) incorporation by reference; (2) assumption; (3) agency; (4) veil-piercing/alter ego; and (5) estoppel. Motion to Compel at 21. In his introduction, Boling gives passing mention to theories that the arbitration agreement is enforceable against counterdefendants based on the (i) inextricably intertwined doctrine, (ii) third party beneficiary doctrine (iii) a pre-existing relationship giving rise to equitable estoppel doctrine, and (iv) mutuality of remedy doctrine. Motion to Compel at 1-2. Of these several theories, Boling has made only the slightest effort to support his argument that the non-signatory counterdefendants should be compelled to arbitrate based on (i) agency or third party beneficiary theories and/or (ii) inextricably intertwined or equitable estoppel theories.[1]

With respect to counterdefendants Meyers and Benak, Boling appears to argue that, as principals of RE Capital, LLC (the guarantor and 50% owner of the manager entity), they are "imputed with knowledge" of the existence of the arbitration agreement and (apparently) such knowledge makes the arbitration agreement applicable to them. Boling has failed to cite any authority under Idaho contract law that supports Boling's novel "imputed knowledge of indirect owners of a bankrupt guarantor" theory; counterdefendants are not aware that any such law exists. Accordingly, Boling's unsupported "imputed knowledge" theory is an insufficient basis upon which to compel non-signatory counterdefendants Meyers and Benak to arbitration.

[1] While Boling advances an incorporation by reference theory against RE Capital, LLC, that party is currently protected by the automatic stay in bankruptcy so his argument on such grounds is irrelevant.

Because Boling makes some effort to provide authority on his agency/third party beneficiary theories and/or the interwoven/equitable estoppel theories, counterdefendants are compelled to address them below.

a. Boling has failed to establish that the non-signatory counterdefendants can be compelled to arbitration under either an agency or third-party beneficiary theory.

In his motion to compel, Boling appears to argue that non-signatory counterdefendants Ruebel, Hansen, Cochran, Meyers, Benak, and Clearwater REI, LLC are bound to the arbitration agreement set forth in the agreement by and between Boling and Clearwater 2008 Note Program, LLC because they are either agents of Clearwater 2008 Note Program and/or third-party beneficiaries of the subscription agreement. Boling has failed to set forth argument or authority in support of either theory, relying instead on passing references to the inapplicable federal substantive law of arbitration with no analysis of how this Court could apply the facts of this case to controlling legal authority. Because Boling has failed to establish that the non-signatory counterdefendants' actions bind them to the arbitration agreement under either agency or third-party beneficiary theories, both must be rejected.

The non-signatory counterdefendants cannot be compelled to arbitrate this dispute on an agency theory because—to the extent they are even properly characterized as agents—they were each acting for a disclosed principal: Clearwater 2008 Note Program, LLC. Under Idaho law, it is well settled that agents of a disclosed principal cannot be held to contracts made for a disclosed principal. *See, e.g., Triad Leasing & Fin., Inc. v. Rocky Mt. Rogues, Inc.*, 148 Idaho 503, 507-508 (2009) (citing *General Motors Acceptance Corp. v. Turner Ins. Agency, Inc.*, 96 Idaho 691, 696-97, 535 P.2d 664, 669-70 (1975). To the extent that Clearwater 2008 Note Program, LLC was a disclosed principle, the non-signatory counterdefendans cannot be held to its contractual obligations—including the agreement to arbitrate.

Under the uncontroverted facts of this case, there can be no doubt that each non-signatory counterdefendant fully disclosed to Boling the nature of his/its relationship with the disclosed principal, Clearwater 2008 Note Program, LLC. Indeed, on page 2 of the 2nd Supplement to the PPM (a document Boling claims he received on or about February 4, 2010), the relationship between all of the counterdefendants (except Ruebel) and Clearwater 2008 Note Program was disclosed in explicit detail. *See* Appendix A.[2] The February 01, 2010 cover letter, which contained all of the initial correspondence sent by Clearwater to Boling, also makes it clear that such documents were provided on behalf of the Clearwater 2008 Note program, LLC. *See* Appendix B. In this document, which appears to be the only document bearing Rob Ruebel's name, he is identified as the "Regional Vice President of Sales."

The Subscription Agreement (Appendix C) (which is the document containing the arbitration agreement) expressly provides that it is by and between the Clearwater 2008 Note Program, LLC and the subscriber, Boling. The Subscription Agreement identifies "Clearwater 2008 Note Program, LLC, an Idaho limited liability company" as the "Company." Subscription Agreement at 2. The subscription agreement is signed by Bart Cochran, a disclosed agent on behalf of disclosed principal Clearwater REI, LLC, a disclosed agent on behalf of Clearwater 2008 Note Program, LLC. Because each of the non-signatory counterdefendants fully disclosed their relationship with Clearwater 2008 Note Program, LLC and because none signed in their individual capacity, none of the counterdefendants can be held to the terms of the contract by and between Clearwater 2008 Note Program, LLC and Boling. Subscription Agreement at 6.

[2] The full documents containing Appendices A, B, and C have been made available to this court via Boling's submission, and due to the voluminous nature of documents submitted thus far will not be reproduced in their entirety. For the courts convenience, Appendix A and B are pages containing relative examples of the agency disclosures made

Accordingly, Boling cannot enforce the arbitration agreement against these non-signatory counterdefendants based on an agency theory.

It is not clear from Boling's memorandum whether he is also trying to advance a third-party beneficiary theory to support his motion to compel arbitration; to the extent he is, such theory must be rejected. The uncertainty regarding the third-party beneficiary theory stem from footnote 8 of Bolings Motion to Compel, where Boling cites to *Rowe v. Exline*, 153 Cal. App. 4th 1276, 1285 (2007) for the proposition that "a nonsignatory who is the agent of a signatory can even be *compelled* to arbitrate claims against his will." Motion to Compel Arbitration at 23 n. 8 (underlining original). This authority is misplaced because the decision supporting the rule cited by Boling was not based on an agency theory, but rather a third-party beneficiary theory.

Boling failed to advise this Court that the principal for which he cites *Rowe* did not come from *Rowe*, but the case of *Harris v. Superior Court*, 188 Cal. App. 3d 475, 477-78 (1986). *Rowe*, 153 Cal. App. 4th at 1285. In *Harris*, the issue was not whether a non-signatory agent could be compelled to arbitrate against his will, but whether a non-signatory **third-party beneficiary** of the contract could be compelled to arbitrate against his will. *Harris,* 188 Cal. App. 3d. at 478-79. In *Harris,* the Court held that because the physician defendant was an express beneficiary under the agreement containing the arbitration agreement, and because the physician defendant had accepted the benefits of such agreement, he was also bound by the arbitration provision contained in such agreement. *Id.* at 479.

In this matter, Boling alleged in his introduction that the counterdefendants were third-party beneficiaries, but he failed to offer any argument or authority in support of that position in the body of the memorandum. Under Idaho law, in order to obtain status as a third-

party beneficiary, "it must be shown that the contract was made for his direct benefit" and it "is not sufficient that he be a mere incidental beneficiary. *Adkinson Corp. v. American Bldg*, 107 Idaho 406, 409 (1984) (quoting *Dawson v. Eldredge*, 84 Idaho 331, 337 (1962)). While third-party beneficiary status does not require the beneficiary to be called out by name there must be, at a minimum, some reference within the contract from which on can glean the intent to benefit a class of third-parties. *See Just's v. Arrington Constr. Co.*, 99 Idaho 462, 475 (1978) (finding intent to benefit third party class of merchant's within a local improvement district was evident on the face of the contract); *c.f. Dawson v. Eldredge*, 84 Idaho 331, 337 (1962) (recipient of loan proceeds was not a third party beneficiary of agreement made between borrower and lender). Here, Boling has not argued or alleged that the face of the agreement evidences any intent to benefit any of the non-signatory counterdefendants as third-party beneficiaries. Accordingly, to the extent the passing reference to a third-party beneficiary status made in the introduction was sufficient to place the theory before this Court, it should be rejected.

The subscription agreement by and between Boling and Clearwater 2008 Note Program, LLC, the PPM that was incorporated into the subscription agreement by reference, and the cover letter sent by Clearwater to Boling bearing Rob Ruebel's name, title, and contact information, all contained information specifically detailing each non-signatory counterdefendant's relationship with the disclosed principal, Clearwater 2008 Note Program, LLC. None of these documents contained any indication that the agreement between Boling and Clearwater 2008 Note Program, LLC was made for the express benefit of any of the non-signatory counterdefendants. Because Clearwater 2008 Note Program was a disclosed principal, Boling cannot rely on agency theories to compel these non-signatories to arbitration;

because none of the non-signatory counterdefendants are third-party beneficiaries under Idaho law, Boling cannot rely on that theory to compel the counterdefendants to arbitration.

b. Boling has failed to establish that the non-signatory counterdefendants must be compelled to arbitrate this dispute under intertwined claims or equitable estopple theories.

Boling has also failed to establish that federal "inextricably intertwined" theories or Idaho's equitable estoppel doctrine provides a basis upon which this Court can compel arbitration against the non-signatory counterdefendants. Under Idaho law, in order to establish equitable estoppel, the party claiming estoppel must prove

> [1] a false representation or concealment of a material fact made with actual or constructive knowledge of the true state of facts; [2] that the party to whom the false representation was made was without knowledge or the means of acquiring knowledge of the real facts; [3] that the false representation was made with the intent that it be acted upon; and [4] that the party to whom it was made relied on and acted upon it to his prejudice.

Idaho Title Co. v. American States Ins. Co., 96 Idaho 465, 468, 531 P.2d 227, 230 (1975) (quoting *Bjornstad v. Perry*, 92 Idaho 402, 403, 443 P.2d 999, 1002 (1968)) (brackets added). "All of the above factors are of equal importance and there can be no estoppel absent any of the elements." *Id.* (citing *Sullivan v. Mabey*, 45 Idaho 595, 264 P. 233 (1928)).

In this matter there is no factual basis for a claim of equitable estopple because Boling cannot maintain that he was "without the means of acquiring knowledge of the real facts"—a mandatory element under the equitable estopple doctrine. As a precondition to investing in the program, Boling was required to certify that he had the opportunity to ask any and all questions material to his investing decision and that his questions were answered to his satisfaction:

> I have had the opportunity to ask questions of, and receive answers from, the Company and the Manager concerning the Company, the creation or operation of the company or terms and conditions of the offering of Notes, and to obtain any additional information deemed necessary to verify the accuracy of the information

> contained in the memorandum. I have been provided with all materials and information requested by either me or others representing me, including any information requested to verify any information furnished to me.

Subscription Agreement at 3-4, paragraph 6.

Boling cannot claim that he was prejudiced by not receiving certain information when Boling certified that he had all of the information that was material to his decision making process. Boling's counterclaims make much of the fact that he was not provided with a current balance sheet for RE Capital or a copy of the Note prior to making his investment. However, as per the subscription agreement, it was incumbent on Boling to undertake whatever actions he deemed necessary (i.e., asking further questions) to independently verify any and all information that he deemed material to his investing decision. Boling certified to Clearwater 2008 Note Program, LLC that he was satisfied with his own due diligence. In this litigation, Boling has neither alleged nor attempted to prove that he requested any additional information regarding (i) the Note or (ii) whether the allegedly outdated RE Capital balance sheet was the most current available. Because Boling did not ask any questions he cannot now claim that counterdefendants should have given him more answers.

The cases upon which Boling relies to support his "interwoven" claims and/or "equitable estopple" basis for compelling arbitration against the non-signatory counterdefendants are without merit because they rely on the federal substantive law of arbitration, which *Carlisle* makes clear does not provide the proper rules of decision. Moreover, even if this Court is inclined to consider prior decisions applying the federal substantive law of arbitration, it should be noted that compelling arbitration against a non-signatory on equitable estoppel grounds was a very unsettled and seldom used theory.

> While the Fifth Circuit has recognized concerted-misconduct estoppel, the theory is far from well-settled in the federal courts.

> Despite hundreds of federal appeals involving arbitration, it appears in only 10 reported opinions. In the two leading cases, *Grigson v. Creative Artists Agency L.L.C.* and *MS Dealer Service Corp. v. Franklin*, the Fifth and Eleventh Circuits held that *both* direct-benefits *and* concerted-misconducted estoppel were present, so it is unclear what the latter theory added to the result. Of the remainder, the theory was found inapplicable in 4, and it was not reached in 2 more. In only 2 cases did the result hinge on the exception – and in those the Fifth Circuit compelled arbitration in one *and refused to do so in the other.*

In Re. Merrill Lynch Trust Co., 235 S.W.3d 185, 192-93 (Tex. 2007) (emphasis in original) (collecting cases discussing equitable estopple as a grounds for enforcing arbitration against non-signatories). The Texas court went on to note "Until the United States Supreme Court clarifies whether concerted-misconduct estoppel correctly reflects federal law, or even whether federal or state law governs the issue, today's decision must remain somewhat tentative." *Id.* at 195. The United States Supreme Court has spoken on the issue and, in so doing, has declared that there is no federal substantive law of arbitration and that state contract law applies. *See Arthur Anderson v. Carlisle,* 556 U.S. 624, 631-32 (2009). Accordingly, any reliance that this Court might place upon those prior decisions applying federal substantive law would begin to create a field of extra-contractual law that applies to only arbitration agreements. Such an approach should be rejected: "The FAA directs courts to place arbitration agreements on equal footing with other contracts, but it "does not require parties to arbitrate when they have not agreed to do so." *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 293-94 (2002) (citing *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478, 103 L. Ed. 2d 488, 109 S. Ct. 1248 n9 (1989) and *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404, n. 12 (1967) ("The purpose of Congress in 1925 was to make arbitration agreements as enforceable as other contracts, but not more so.").

4. By substantially invoking litigation machinery, Boling has waived his right to seek an order compelling the non-signatory counterdefendants into arbitration.

Even if this Court were to determine that there is some theory pursuant to which the non-signatory counterdefendants could be compelled into arbitration, it should nevertheless find that Boling has waived his right to compel arbitration. Whether a party has waived its right to compel arbitration depends on whether such party has substantially invoked the litigation process. This analysis, which is a totality of the circumstances test, considers factors such as the following:

> (1) whether the party's actions are inconsistent with the right to arbitrate; (2) whether "the litigation machinery has been substantially invoked" and the parties "were well into preparation of a lawsuit" before the party notified the opposing party of an intent to arbitrate; (3) whether a party either requested arbitration enforcement close to the trial date or delayed for a long period before seeking a stay; (4) whether a defendant seeking arbitration filed a counterclaim without asking for a stay of the proceedings; (5) "whether important intervening steps [e.g., taking advantage of judicial discovery procedures not available in arbitration] had taken place"; and (6) whether the delay "affected, misled, or prejudiced" the opposing party.

Hill v. Richo Ams. Corp., 603 F.3d 766, 772-73 (10th Cir. 2010) (quoting *Reid Burton*, 614 F.2d at 702) (brackets in original)). In the present case, factors 4, 5, and 6 are particularly critical. Plaintiffs filed the present action by means of a petition seeking an order staying arbitration against them. Rather than demand that plaintiffs be compelled to arbitration, Boling substantially invoked the litigation machinery by filing substantive counterclaims and then engaged in substantial pre-trial motion practice regarding whether he was allowed to pursue his counterclaims in this action. After prevailing against plaintiffs' motion to dismiss his counterclaim, Boling engaged in significant discovery. It was only after plaintiffs provided to Boling volumes of documents and substantive interrogatory responses that Boling decided to

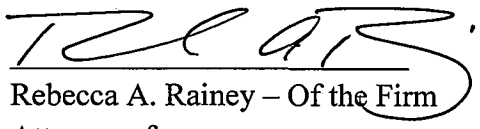
reverse his earlier position regarding maintaining the counterclaims in this forum and, instead, seek to compel arbitration. Because Boling has taken the positions of (i) fighting to have his counterclaims heard in this court and (ii) engaging in discovery—two positions which are inimical to his present motion to compel—Boling has waived whatever right he may have once had to compel these non-signatory counterdefendants to arbitration.

CONCLUSION

For the forgoing reasons, counterdefendants respectfully request that Boling's motion to compel arbitration be denied.

DATED this 30th day of January, 2013.

RAINEY LAW OFFICE



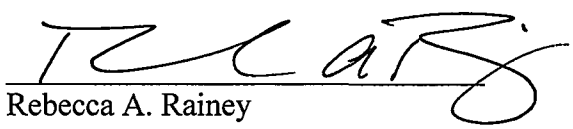
Rebecca A. Rainey – Of the Firm
Attorneys for
Plaintiff/Counterdefendants

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January, 2013, I caused to be served a copy of the foregoing **MEMORANDUM IN OPPOSITION OF MOTION TO COMPEL ARBITRATION** on the following, in the manner indicated below:

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630

( ) Via U.S. Mail
( ) Via Facsimile – 949-588-7078
( ) Via Overnight Mail
( ) Via Hand Delivery
(X) Via e-mail



Rebecca A. Rainey

APPENDIX A

OFFERING MEMORANDUM

The following information described in the Offering Memorandum is hereby modified and supplemented as follows:

(a) The Balance Sheet of RE Capital Investments, LLC as of July 31, 2008 attached to the Memorandum as Exhibit C has been updated through December 31, 2008. The Balance Sheet of RE Capital Investments, LLC as of December 31, 2008 is attached to this Second Supplement as Exhibit A.

(b) As of the date of this Second Supplement, the Company has made three loans using proceeds of the Offering. Certain of the terms of those loans are as follows:

Property:	Florence Hospital	Legends 19	North Seattle Condos
Location:	Florence, AZ	Raymore, MO	Kenmore, WA
Loan Amount:	$6,160,000	$1,562,000	$3,745,740
Loan Date:	February 6, 2009	March 5, 2009	June 29, 2009
Appraised Value:	$10,995,000 (As Is)	$2,296,000	$8,000,000
Loan to Value (LTV)	56.03%	65.19%	46.82%
Interest Rate:	14%	14%	14%
Origination Fee:	4%	4%	4%
Term:	12 months	4 months	6 months

(c) The relationship of the Company, the Manager and RE Capital Investments, LLC to each other, and their respective owners, is as follows:

- RE Capital Investments, LLC owns 55.84% of Clearwater
  - Ronald D. Meyer owns 100% of Terron Investments, Inc., which owns 50% of RE Capital Investments, LLC
  - Christopher J. Benak owns 100% of Diamond B Asset Management, Inc., which owns the other 50% of RE Capital Investments, LLC
- Barton Cole Cochran owns 100% of Leap, Inc., which owns 19.58% of Clearwater
- Chad James Hansen owns 100% of Green Jacket Investments, Inc., which owns 19.58% of Clearwater
- A former employee of Clearwater owns the remaining 5% of Clearwater

(d) On September 4, 2008, an investor in several real estate development projects, including a project located in California and managed by Ronald Meyer, filed a complaint and statement of claim in arbitration in the Superior Court of the State of California against several individual and corporate defendants, including Mr. Meyer. The allegations in the complaint include claims of state law corporate securities fraud, breach of fiduciary duty, conversion, intentional misrepresentation, negligent misrepresentation and unfair business practices, among other claims, in connection with Mr. Meyer's involvement in, and alleged representations with respect to, certain real estate projects, as well as the activities of other defendants with respect to projects unrelated to Mr. Meyer. The claimant is seeking money damages, in addition to other remedies. Mr. Meyer and the other named defendants believe the lawsuit is without any merit and fully deny and are vigorously defending the claimant's allegations. Mr. Meyer believes that he will be successful in defending the lawsuit. The court has not made any ruling on the merits of the claimant's complaint.

(e) Bart Cochran, who was formerly the Company's Vice President of Acquisitions & Operations, is now the Company's President. Chad Hansen, who was formerly the Company's Vice President of Finance, is now the Company's Chief Financial Officer.

(f) The Offering Termination Date is hereby extended to December 31, 2009. The Manager reserves the right to further extend the Offering for an additional 12 months to December 31, 2010 in its sole discretion.

The information in this Second Supplement supersedes any information to the contrary provided in the Offering Memorandum.

SUPPLEMENTAL INFORMATION - The Private Placement Memorandum for the Offering of Notes consists of this sticker, the Memorandum dated August 29, 2008, the First Supplement to the Memorandum dated October 3, 2008 and this Second Supplement dated June 30, 2009, which supplements, modifies, and supersedes some of the information contained in the Memorandum and the First Supplement.

APPENDIX B

CLEARWATER
REAL ESTATE INVESTMENTS

1300 E. STATE STREET, STE 103
EAGLE, IDAHO 83616
Ph (208) 639-4488
(866) 217-4906
Fax (208) 939-1431
www.clearwaterrei.com

February 01, 2010

RE: Clearwater 2008 Note Program, LLC (PPM Kit)

Dear Mark Boling:

Enclosed, please find the Private Placement Memorandum (PPM) for the ***Clearwater 2008 Note Program, LLC.***

The ***Clearwater 2008 Note Program*** offers investors predictable monthly income with an option to reinvest their interest thereby compounding their return. Some of the differences between the ***Clearwater 2008 Note Program*** and other fixed income type investments include but are not limited to the following:

- » 9% Annual interest (paid monthly)
- » All Note proceeds used to make loans are collateralized by First Mortgages/Deeds of Trust
- » Guarantor: RE Capital Investments, LLC (120% net asset coverage on the Principal Only Corporate Guaranty)
- » Annual audits by independent CPA firm
- » Reinvestment Option (interest compounded monthly)
- » Liquidity: Annually, limited to 10% of offering proceeds
- » Suitable for Qualified Plans (No UBTI)
- » Suitability: Accredited Investors Only

If you should have any questions or need assistance with the enclosed information, please feel free to contact your wholesale representative using the information provided below and they will gladly assist you.

Thanks for your consideration to Clearwater and we look forward to serving you and your valued clients.

Sincerely,
Clearwater Real Estate Investments

CLEARWATER
REAL ESTATE INVESTMENTS

Rob Ruebel
Regional Vice President of Sales

Office: 208.639.4493
Mobile: 208.407.5881
rob@clearwaterrei.com

APPENDIX C

PPM BOOK NUMBER
08Note-A238

INSTRUCTIONS TO INVESTORS

Clearwater 2008 Note Program, LLC
9.0% Notes Due December 31, 2015

Please read carefully the Private Placement Memorandum dated August 18, 2008 for the sale of $20,000,000 (subject to increase to $40,000,000) in aggregate principal amount of 9.0% Notes due December 31, 2015 ("Notes") issued by Clearwater 2008 Note Program, LLC, an Idaho limited liability company ("Company"), as supplemented from time to time, and all Exhibits thereto (collectively, the "Memorandum"), before deciding to subscribe. Capitalized terms not defined herein have the meanings set forth in the Memorandum.

Each prospective investor in Notes should examine the suitability of this type of investment in the context of his/her own needs, investment objectives and financial capabilities and should make his/her own independent investigation and decision as to suitability and as to the risk and potential gain involved. Also, each prospective investor in Notes is encouraged to consult with his/her attorney, accountant, financial consultant or other business or tax advisor regarding the risks and merits of the proposed investment.

This Offering is limited to investors who certify that they meet all of the qualifications set forth in the Memorandum for the purchase of Notes.

If you meet these qualifications and desire to purchase Notes, then please complete, execute and deliver the attached Subscription Agreement along with your check, payable to "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC" in the amount of the Subscription Payment.

Subscription Agreements and all attachments should be mailed or delivered to the Company at:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

All funds should be mailed, delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

Wire Instructions:
Account Number: [redacted]
Routing/ABA Number: [redacted]
Account Name: Clearwater 2008 Note Program, LLC

Upon receipt of this signed Subscription Agreement, verification of your investment qualifications and acceptance of your subscription by the Company (the Company reserves the right, in its sole discretion, to accept or reject a subscription for any or no reason whatsoever), the Company will notify you of receipt and acceptance of your subscription.

Important Note: **The person or entity actually making the decision to invest in Notes should complete and execute this Subscription Agreement. For example, retirement plans often hold certain investments in trust for their beneficiaries, but the beneficiaries may maintain investment control and discretion. In such a situation, the beneficiary with investment control must complete and execute this Subscription Agreement (this also applies to trusts, custodial accounts and similar arrangements).**

INTERNAL USE ONLY
Date Rec'd: 2/24/10
By:

SUBSCRIPTION AGREEMENT

Clearwater 2008 Note Program, LLC
9.0% Notes Due December 31, 2015

This is the offer and agreement ("Subscription Agreement") of the undersigned to purchase $50,000.00 ($50,000 minimum investment) in principal amount of 9.0% Notes due December 31, 2015 ("Notes") to be issued by Clearwater 2008 Note Program, LLC, an Idaho limited liability company (the "Company") ("Subscription Price"), subject to the terms, conditions, acknowledgments, representations and warranties stated herein and in the Confidential Private Placement Memorandum relating to the offer of up to $20,000,000 (subject to increase to $40,000,000) in aggregate principal amount in Notes dated August 29, 2008, as supplemented from time to time (the "Memorandum"). I am including with this Subscription Agreement a check payable to the order of "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC" in the amount of $50,000.00, representing the Subscription Price for the Notes I am purchasing. All terms utilized herein shall have the same meaning as set forth in the Memorandum.

In order to induce the Company to accept this Subscription Agreement for Notes and as further consideration for such acceptance, I hereby make the following acknowledgments, representations and warranties with the full knowledge that the Company will expressly rely thereon in making a decision to accept or reject this Subscription Agreement:

1. I hereby adopt, confirm and agree to all of the covenants, representations and warranties set out in this Subscription Agreement.
2. My primary state of residence is: California
3. My date of birth is: June 9, 1952.
4. If I am a natural person, I hereby represent and warrant that (check as appropriate):
   (a) X I, together with my spouse, have a net worth, inclusive of home, home furnishings and personal automobiles, in excess of $1,000,000; or
   (b) _____ I have individual income in excess of $200,000, or joint income with my spouse, in excess of $300,000, in each of the two most recent years, and I reasonably expect individual or joint income in excess of that amount in the current year.
5. If other than a natural person, such entity represents and warrants that (check as appropriate):
   _____ it is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.
6. If other than a natural person, is such entity a benefit plan qualified under Code Section 401(a), a benefit plan subject to ERISA, an individual retirement account or arrangement under Code Section 408 or any other company sponsored employee benefit plan or program?
   _____ Yes. _____ No.
7. Neither I nor any subsidiary, affiliate, owner, shareholder, partner, member, indemnitor, guarantor or related person or entity:
   (a) is a Sanctioned Person (as defined below);
   (b) has more than 15% of its assets in Sanctioned Countries (as defined below); or
   (c) derives more than 15% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries.

   For purposes of the foregoing, a "Sanctioned Person" shall mean (a) a person named on the list of "specially designated nationals" or "blocked persons" maintained by the U.S. Office of Foreign Assets Control ("*OFAC*") at *http://www.treas.gov/offices/eotffc/ofac/sdn/index.html*, or as otherwise published from time to time, or (b) (1) an agency of the government of a Sanctioned Country, (2) an organization controlled by a Sanctioned Country, or (3) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. A "Sanctioned Country" shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available at *http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html*, or as otherwise published from time to time.
8. Under penalties of perjury, I certify (a) that the number shown on this form is my correct taxpayer identification number and (b) that I am not subject to backup withholding, either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends or the Internal Revenue Service has notified me that I am no longer subject to backup withholding. **(Please strike out the language certifying that you are not subject to backup withholding due to notified payee under-reporting if you have been notified that you are subject to backup withholding due to notified payee under-reporting, and you have not**

received a notice from the Internal Revenue Service advising you that backup withholding has terminated.)

9. I further represent and warrant that such investment is not disproportionate to my income or available liquid funds and that I further have the capacity to protect my interests in connection with the purchase of the Notes.

10. I (we) wish to own my (our) Notes as follows (check one):

X (a) Separate or individual property. (In community property states, if the purchaser is married, his (her) spouse must submit written consent if community funds will be used to purchase the Notes.)

____ (b) Husband and Wife as community property. (Community property states only. Husband and Wife should both sign all required documents unless advised by their attorney that one signature is sufficient.)

____ (c) Joint Tenants with right of survivorship. (Both parties must sign all required documents unless advised by their attorneys that one signature is sufficient.)

____ (d) Tenants in Common. (Both parties must sign all required documents.)

____ (e) Trust. (Attach copy of trust instrument and include name of trust, name of trustee and date trust was formed.)

____ (f) Partnership or Limited Liability Company. (Attach copy of articles or certificate, if any, and partnership agreement or operating agreement and include evidence of authority for person who executes required documents.)

____ (g) Husband and Wife with right of survivorship. (Husband and wife should sign all documents unless other advised by their attorney.)

____ (h) IRA or Qualified Plan:

_____

____ (i) Other (indicate):

_____

_____

11. If the owner of Notes is an entity (trust, LLC, Partnership, etc.) my relationship to the owning entity is _____ (trustee, owner, partner, etc.)

Subscriber's Signature: X Mark Boling Date: 2/12/10

Subscriber's Signature: X_____ Date: _____

1. I understand that in the event this Subscription Agreement is not accepted or, if accepted, the Offering is subsequently terminated or cancelled then the funds transmitted herewith shall be returned to the undersigned and this Subscription Agreement shall be terminated and of no further effect. RB Capital, LLC has agreed to guarantee the repayment of principal under the Notes. By executing this Subscription Agreement, each prospective investor of Notes approves the foregoing, acknowledges the risks described in the section of the Memorandum entitled "Risk Factors," and waives those provisions of the Securities Exchange Act of 1934, as amended, generally governing funds held in escrow prior to closing an offering.

2. I acknowledge that I have received, read and fully understand the Memorandum. I acknowledge that I am basing my decision to invest in Notes on the Memorandum and I have relied only on the information contained in said materials and have not relied upon any representations made by any other person. I recognize that an investment in Notes involves substantial risk and I am fully cognizant of and understand all of the risk factors related to the purchase of Notes, including, but not limited to, those risks set forth in the sections of the Memorandum entitled "Risk Factors."

3. My overall commitment to investments that are not readily marketable is not disproportionate to my individual net worth, and my investment in Notes will not cause such overall commitment to become excessive. I have adequate means of providing for my financial requirements, both current and anticipated, and have no need for liquidity in this investment. I can bear and am willing to accept the economic risk of losing my entire investment in Notes.

4. I acknowledge that the sale of Notes has not been accompanied by the publication of any advertisement, any general solicitation or as the direct result of an investment seminar sponsored by the Company or any of its Affiliates.

5. All information that I have provided to the Company herein concerning my suitability to invest in Notes is complete, accurate and correct as of the date of my signature on the last page of this Subscription Agreement. I hereby agree to notify the Company immediately of any material change in any such information occurring prior to the acceptance of this Subscription Agreement, including any information about changes concerning my net worth and financial position.

6. I have had the opportunity to ask questions of, and receive answers from, the Company and the Manager concerning the Company, the creation or operation of the Company or terms and conditions of the offering of Notes, and to obtain any additional information deemed necessary to verify the accuracy of the information contained in the Memorandum. I have been

provided with all materials and information requested by either me or others representing me, including any information requested to verify any information furnished to me.

7. I am purchasing Notes for my own account and for investment purposes only and have no present intention, understanding or arrangement for the distribution, transfer, assignment, resale or subdivision of Notes. I understand that, due to the restrictions referred to in Paragraph 8 below, and the lack of any market existing or to exist for Notes, my investment in the Company will be highly illiquid and may have to be held indefinitely.

8. I am fully aware that Notes subscribed for hereunder have not been registered with the Securities and Exchange Commission in reliance on an exemption specified in Regulation D under the Securities Act of 1933, as amended, which reliance is based in part upon my representations set forth herein. I understand that Notes subscribed for herein have not been registered under applicable state securities laws and are being offered and sold pursuant to the exemptions specified in said laws, and unless they are registered, they may not be re-offered for sale or resold except in a transaction or as a security exempt under those laws. I further understand that the specific approval of such resales by the state securities administrator may be required in some states. **Notes have not been approved or disapproved by the United States Securities and Exchange Commission or other regulatory authority, nor have any of the foregoing authorities passed upon or endorsed the merits of this Offering or the accuracy or adequacy of the Memorandum. Any representation to the contrary is unlawful.**

9. I acknowledge that Home Federal Bank is acting solely as escrow holder in connection with the Offering of Notes, and makes no recommendations with respect thereto. I understand that Home Federal Bank has made no investigation regarding the Offering, Notes, the Company, the Manager, their Affiliates or their officers and directors, or any other person or entity involved in the Offering.

10. This Subscription Agreement shall be construed in accordance with and governed by the laws of the State of Idaho without regard to its choice of law provisions.

11. I hereby covenant and agree that any dispute, controversy or other claim arising under, out of or relating to this Agreement or any of the transactions contemplated hereby, or any amendment thereof, or the breach or interpretation hereof or thereof, shall be determined and settled in binding arbitration in Boise, Idaho, in accordance with applicable Idaho law, and with the rules and procedures of The American Arbitration Association. The prevailing party shall be entitled to an award of its reasonable costs and expenses, including, but not limited to, attorneys' fees, in addition to any other available remedies. Any award rendered therein shall be final and binding on each and all of the parties thereto and their personal representatives, and judgment may be entered thereon in any court of competent jurisdiction. **BY EXECUTING THIS AGREEMENT, YOU ARE AGREEING TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE SUCH DISPUTES LITIGATED IN A COURT OR JURY TRIAL, AND YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE. BY EXECUTING THIS AGREEMENT, YOU HEREBY CONFIRM THAT YOUR AGREEMENTS TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

12. **I hereby agree to indemnify, defend and hold harmless the Company, the Manager, their Affiliates and all of their members, managers, shareholders, officers, employees, affiliates and advisors, from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that they may incur by reason of my failure to fulfill all of the terms and conditions of this Subscription Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished to any of the foregoing in connection with this transaction. This indemnification includes, but is not limited to, any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) incurred by the Company, the Manager, their Affiliates and any of their members, managers, shareholders, directors, officers, employees, affiliates or advisors, defending against any alleged violation of federal or state securities laws which is based upon or related to any untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished in connection with this transaction.**

13. I hereby acknowledge and agree that : (a) I may not transfer or assign this Subscription Agreement, or any interest herein, and any purported transfer shall be void; (b) except as specifically described herein, I am not entitled to cancel, terminate or revoke this Subscription Agreement and that this Subscription Agreement will be binding on my heirs, successors and personal representatives; provided, however, that if the Company rejects this Subscription Agreement, this Subscription Agreement shall be automatically canceled, terminated and revoked; (c) this Subscription Agreement and the Memorandum, together with all attachments and exhibits thereto, constitute the entire agreement among the parties hereto with respect to the sale of Notes and may be amended, modified or terminated only by a writing executed by all parties (except as provided herein with respect to rejection of this Subscription Agreement by the Company); (d) within two days after receipt of a written request from the Company, the undersigned agrees to provide such information and to execute and deliver such documents as may be necessary to comply with any and all laws and regulations to which the Company is subject; and (e) the representations and warranties of the undersigned set forth herein shall survive the sale of Notes pursuant to this Subscription Agreement.

14. I am not making this investment in any manner as a representative of a charitable remainder unitrust or a charitable remainder trust.

Initial Here_____ Initial Here_____

(SPECIAL INSTRUCTIONS: In all cases, the person/entity making the investment decision to purchase Notes must complete and sign the Subscription Agreement. For example, if the form of ownership designated above is a retirement plan for which investments are directed or made by a third party trustee, then that third party trustee must complete this Subscription Agreement rather than the beneficiaries under the retirement plan. Investors must list their principal place of residence rather than their office or other address on the signature page so that the Company can confirm compliance with appropriate securities laws. If you wish correspondence sent to some address other than your principal residence, please provide a mailing address in the blank provided below. Additionally, in an attempt to expedite the delivery of material information, the Company asks (but does not require) that you list a secondary contact source that may be able to reach you, if you are unavailable through any other reasonable means listed below.)

IN WITNESS WHEREOF, I (we) has executed this Subscription Agreement this 12 day of February, 2010.

A. REGISTRATION INFORMATION or CUSTODIAN INFORMATION (If applicable)

Send ALL paperwork directly to the custodian

Please print the exact name (registration) investor desires on account:

MARK Boling

Mailing address: 21986 Cayuga Lane
Lake Forest, CA 92630

E-mail address: maboling@earthlink.net

B. INVESTOR INFORMATION

Please send all investor correspondence to the following:

Name: MARK Boling

Address: 21986 Cayuga Lane, Lake Forest, CA 92630

Investor Phone: Business ( ) Home: ( )

Investor Fax: Business ( ) Home: ( )

Primary State of Residence: California

Social Security or Federal Tax ID Number:

C. SECONDARY CONTACT INFORMATION (OPTIONAL)

If the Company is unable to contact the Subscriber directly through any reasonable means provided by the Subscriber hereby, please contact the following individual who will be instructed by Subscriber to inform him/her that Subscriber should contact the Company as expeditiously as possible:

Secondary Contact Name: Patricia Mocella

Secondary Contact Address: 21986 Cayuga Lane, Lake Forest, CA 92630

Secondary Contact Phone: Business ( ) Home: ( )

Secondary Contact Fax: Business ( ) Home: ( )

D. ELECTION TO PARTICIPATE IN INTEREST REINVESTMENT PROGRAM

If you wish to participate in the Interest Reinvestment Program, please initial here: _____

If you wish to receive monthly distributions of interest, please initial here: MB

You will have the opportunity once annually to change your election by giving written notice thereof to the Company no later than November 30th in the year prior to the election year.

E. SIGNATURES

THE UNDERSIGNED HAS THE AUTHORITY TO ENTER INTO THIS SUBSCRIPTION AGREEMENT ON BEHALF OF THE PERSON(S) OR ENTITY REGISTERED IN A. ABOVE.

Executed this 12 day of February, 2010, at Lake Forest, CA

X Mark Boling
Signature (Investor, or authorized signatory)

X _____
Signature (Investor, or authorized signatory)

F. SUBMIT SUBSCRIPTION

Mail the executed Subscription Agreement to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

The check (make payable to "Home Federal Bank, as Escrow Agent for Clearwater 2008 Note Program, LLC") or funds should be wired, mailed or delivered to:

All funds should be delivered or wired to:

Clearwater 2008 Note Program, LLC
1300 E. State Street, Suite 103
Eagle, ID 83616
Attn: Subscription Services

Wire Instructions:

Account Number: [redacted]
Routing/ABA Number: [redacted]
Account Name: Clearwater 2008 Note Program, LLC

Subscription Accepted:

Clearwater 2008 Note Program, LLC

By: Clearwater REI, LLC
an Idaho limited liability company
Its: Manager

By: _____ Date: 2/26/08

Name: Bart Cowan

Its: Mgr

** INBOUND NOTIFICATION : FAX RECEIVED SUCCESSFULLY **

TIME RECEIVED	REMOTE CSID	TION	PAGES	STATUS
February 1, 2013 8:41:36 AM MST		333	10	Received

NO. A.M. 1122 FILED P.M.

FEB 0 1 2013

CHRISTOPHER D. RICH, Clerk
By JERI HEATON
DEPUTY

Bail
Tara
2.4.13
SL

ORIGINAL

Mark Boling
21986 Cayuga Lane
Lake Forest, CA 92630
(949) 588-9222
(949) 588-7078 [fax]
maboling@earthlink.net
Defendant/Counter-Claimant/Third Party Plaintiff, in pro se

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT

FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC, et al. Plaintiffs/Counter-Defendants, vs. MARK BOLING, Defendant/Counter-Claimant	Case No.: CV OC 1208669 **DEFENDANT/COUNTER-CLAIMANT'S REPLY TO COUNTERDEFENDANTS' OPPOSITION TO MOTION TO COMPEL ARBITRATION**
AND RELATED ACTIONS	**If Required:** **Date: February 6, 2013** **Time: 2:00 p.m.** **Place: 200 W. Front St., Boise, ID** **[Request for Telephonic Appearance, if any – *I.R.C.P.*, Rule 7 (b) (4)]**

1. **The scope of the arbitration clause includes the Counterdefendants.**

Boling seeks to conserve judicial resources by compelling arbitration. Counterdefendants concede that an agreement exists and Boling's ICPA claims are subject to the arbitration clause in that agreement. [Opposition, p. 4] Counterdefendants only contest that they are not subject to arbitration because they are non-signatories to the agreement in which the arbitration clause exists. Counterdefendants' argument goes to the scope of the arbitration clause and not to the validity of the existing agreement. Once the existence of a contract is established,

ND

to contracts made for a disclosed principal" is misplaced because Boling is seeking relief against Counterdefendants under his ICPA tort claims and not a breach of contract claim against Counterdefendants. The "disclosed" nature of their involvement is therefore irrelevant. As previously mentioned, Counterdefendants concede that Boling's ICPA (tort) claims are subject to the arbitration clause in that agreement. Because the claims are cast in tort rather than contract does not avoid the arbitration clause. *Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc.* (11th Cir. 1993) 10 F.3d 753, 758. The individual Counterdefendants were the officers or employees for the related Clearwater business entities that formed, managed or operated the Note Program for Clearwater 2008 Note Program, LLC ("the Company"). As agents for the Company, Counterdefendants' active participation in the Note Program subjects them to the alleged ICPA violations, which are covered by the broad language of the arbitration clause.

Application of the arbitration clause also exists under a third-party beneficiary theory because a benefit was conferred on the nonsignatory Counterdefendants (s) as a result of the agreement based on the broad language of the arbitration clause to include all claims "arising under, out of or relating to this Agreement or any of the transactions contemplated hereby" [2] and Counterdefendants accepting the fruits of the agreement

---

[2] When contracting parties agree to arbitrate all disputes "under or with respect to" a contract (as they did here), they generally intend to include disputes about their agents' actions because "[a]s a general rule, the actions of a corporate agent on behalf of the corporation are deemed the corporation's acts." If arbitration clauses only apply to contractual signatories, then this intent can only be accomplished by having every officer and agent (and every affiliate and its officers and agents) either sign the contract or be listed as a third-party beneficiary. *In re Merrill Lynch Trust Co. FSB* (Tex., 2007) 235 S.W.3d 185, 189.

(including the PPM [Opposition, p. 11]), which are the loan proceeds used in part to operate Counterdefendants' related businesses and pay compensation to the individual Counterdefendants, making the nonsignatory Counterdefendants a third party beneficiary of the arbitration agreement. [3] [MP, pp. 22-23, 25-26] Thus, the agreement intended to provide a direct benefit to Counterdefendants.

4. **The doctrine of equitable estoppel applies.**

The estoppel theory to which an arbitration clause can be enforced by or against a nonsignatory is based on the circumstances and nature of Boling's ICPA claims that are interwoven with the breach of their the duties and obligations in the formation or performance under the entire agreement, which includes the arbitration clause. [MP, pp. 22-26]

Counterdefendants' reliance on the elements of equitable estoppel in the case of *Idaho Title Co. v. American States Ins. Co.* (1975) 96 Idaho 465, 468, 531 P.2d 227, 230 is a misplaced class of estoppel not applied to enforce an arbitration clause, but rather an attempt to bar a contractual cause of action or defense.

In the context of Idaho arbitration law, equitable estoppel "precludes a party from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes." (citations omitted) *General Conference of the Evangelical Methodist Church v. New Heart Community Fellowship, Inc.* (D. Idaho 2012) 2012 WL 2916013 at *5; See also *Sunkist Soft Drinks, Inc. v. Sunkist Growers,*

---

[3] "Most, if not all, of the loans to be made by the Company with the proceeds of this Offering will be made to Affiliates of the Company and the Manager." [PPM, p.12.]
"The Company, the Manager and their Affiliates are entitled to receive certain significant fees and other significant compensation, payments and reimbursements from the sale of the Notes." [PPM, p.13.] See also, Boling Affdvt, ¶ 49 (a-d).

Inc. (11th Cir. 1993) 10 F.3d 753, 757-758 – re equitable estoppel and claims intertwined with contractual obligations; See also *Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010)186 Cal.App.4th 696, 715 – citing *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 217-218.

Counterdefendants' alleged misrepresentations or concealment of known facts regarding the nature and financial status of the Note Program to support the ICPA violations [MP, pp. 24-25] also serve to establish Counterdefendants' seeking the benefits of the agreement while simultaneously attempting to avoid the burdens that the agreement imposes.

Among the other reasons stated in the MP, a preexisting relationship existed between the nonsignatory Counterdefendants and the Company based on the individual Counterdefendants acting in the capacity of agents, officers or employees of the Company and the other business entity Counterdefendants acting as the agent for the Company, making it equitable to compel the nonsignatory Counterdefendants (s) to also be bound by the arbitration clause in the entire agreement,[4] *and/or* 4) a mutuality of remedy under the arbitration clause makes it equitable to compel the nonsignatory Counterdefendants to also be bound by the arbitration clause in the entire agreement.[5]

---

[4] A nonsignatory who is the agent of a signatory can even be *compelled* to arbitrate claims against his will. *Harris v. Superior Court* (1986) 188 Cal.App.3d 475, 477-479.

[5] "[I]f there were no mutuality of remedy requirement, the seller--which is usually the offeree in the real estate sales context--would have absolutely no incentive to initial the arbitration provision and thereby bind itself to arbitrate disputes." *Marcus & Millichap Real Estate Investment Brokerage Co. v. Hock Investment Co.* (1998) 68 Cal.App.4th 83, 91, fn. 6.

Counterdefendants argue that Boling was not prejudiced during the outset of the agreement because he had the opportunity to ask questions.[6] However, Counterdefendants' failure to disclose material financial facts regarding the nature and status of the Note Program and its Guarantor precluded Boling from initialing asking questions on topics that he did not know were being concealed.[7]

5. **Boling has not waived his right to compel arbitration.**

The party seeking the "heavy burden" to prove a waiver of the right to arbitration must show: "(1) knowledge of an existing right to compel arbitration; (2) acts inconsistent with that existing right; and (3) prejudice to the party opposing arbitration resulting from such inconsistent acts." (underline added) *Bauscher v. Brookstone Securities, Inc.* (D. Idaho, 2012) 2012 WL 3100383 at *5 (citing *Fisher v. A.G. Becker Paribas Inc.* (9th Cir.1986)791 F.2d 691, 694.)

In the instant case, on February 15, 2012 Boling filed a Demand for Commercial Arbitration with the American Arbitration Association ("AAA") against all named Counterdefendants and the Company and served said parties therewith regarding the acts and omissions set forth herein under the arbitration clause in the SA. [Boling Affdvt, ¶ 33] Counterdefendants objected to arbitration and filed this lawsuit.

---

[6] The mere existence of an opportunity to investigate, or of sources of information, will not preclude the plaintiff from relying upon the misrepresentation. (*Teague v. Hall* (1916) 171 Cal. 668, 670; *McMahon v. Grimes* (1929) 206 Cal. 526, 536; *Blackman v. Howes* (1947) 82 Cal.App.2d 275, 280; *Perkins, v. Ketchum* (1962) 322 Cal.App.2d 245, 251) For example, no obligation rests on a purchaser of stock to investigate books of a corporation to determine the truth of representations that cash payment had been made to corporation. See, *Pollak v. Staunton* (1930) 210 Cal. 656.

[7] "A party to a contract cannot rationally calculate the possibility that the other party will deliberately misrepresent terms critical to that contract." (Citations Omitted.) *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993.

In his Answer to paragraph 12 of the Complaint, Boling consistently admits "Demand has been made upon the above named Plaintiffs for arbitration."

Counterdefendants have not set forth in their opposition any prejudice that existed. Counterdefendants do not establish that volumes of discovery were produced in this case. Moreover, the burden of participating in discovery is *inadequate* to show prejudice. *See, Bauscher* at *6.

No trial date has been set in this case.

6. **Conclusion**.

Although Boling submitted one extra page beyond the page limit in his initial Point and Authorities for this motion, he has reduced his Reply Brief by seven (7) pages from the 15-page limit under *Civil Local Rule* 8.1.b to rectify this oversight. [8] Boling has submitted in support of this motion admissible evidence that includes newly discovered evidence in discovery on a new and different motion that warrants a different conclusion to the Court's 10/16/12 ruling.

Based on the foregoing, Boling respectfully requests that the Court compel arbitration against Counterdefendants, and each of them, based on Boling's initial demand for arbitration filed with the AAA on Feb. 15, 2012 and retain jurisdiction to enforce any discovery order issued in the concurrent motion.

Dated: February 1, 2013

MARK BOLING,
Defendant/Counter-Claimant/Third Party Plaintiff

[8] Boling has also served and filed this Reply brief five days prior to the hearing instead of two calendar days under *I.R.C.P. Rule* 7(b)(3)(E) to make further amends.

Clearwater REI, LLC, et al. v. Boling, Case No. CV OC 1208669

CERTIFICATE OF SERVICE

I certify on February 1, 2013, I served the following document(s) in this action:

DEFENDANT/COUNTER-CLAIMANT'S REPLY TO COUNTERDEFENDANTS' OPPOSITION TO MOTION TO COMPEL ARBITRATION

by sending a true copy thereof by **ELECTRONIC SERVICE** pursuant to *I.R.C.P.*, Rule 5 (b) (E) addressed to the party(s) served as follows:

Rebecca A. Rainey – rar@raineylawoffice.com
Attorney for Plaintiffs and Counterdefendants Clearwater REI, LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak and Rob Ruebel.

The transmission of said document(s) to each party served was reported as complete and without error within a reasonable time after said transmission.

Dated: February 1, 2013

Mark Boling
MARK BOLING

NO. _____
A.M _____ FILED P.M. 2:05

FEB 07 2013

CHRISTOPHER D. RICH, Clerk
By TARA THERRIEN
DEPUTY

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC., an Idaho limited liability company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONALD D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; RON RUEBEL, an individual; RE CAPITAL INVESTMENTS, LLC., a Delaware limited liability company, Plaintiffs, vs. MARK BOLING, an individual, Defendant.	Case No.: CV-OC 2012-08669 SECOND DECISION AND ORDER RE: MOTION TO STAY ARBITRATION AND 54(b) CERTIFICATE

The plaintiffs filed this action on May 14, 2012 to stay arbitration on the grounds that they are not signatories to any arbitration agreement with the defendant. It is undisputed that the defendant, Mark Boling, signed a Subscription Agreement for the Clearwater 2008 Note Program LLC (Note Program LLC) with Clearwater REI, LLC acting as agents for the Note Program LLC. The Subscription Agreement included an arbitration provision. On February 15, 2012, Mark Boling filed a demand for arbitration with the American Arbitration Association. The demand for arbitration listed Clearwater REI, LLC., Clearwater Real Estates Investments LLC, RE Capital , LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher Benak, and Ron Ruebel. RE Capital has filed bankruptcy so this Court will not address any issues related to it.

The parties to the Subscription Agreement are Clearwater 2008 Note Program LLC, an Idaho limited liability company, and Mark Boling. Until or unless additional evidence is

M Boling

presented to the Court as provided for by I.R.C.P. 43(e) that would warrant any other conclusion, the only parties which are required to arbitrate are Clearwater 2008 Note Program LLC and Mark Boling. The additional evidence submitted by Mr. Boling does not persuade the Court that the non-signatories to the agreement are bound by it in their individual capacity. They are not third-party beneficiaries. To the extent that the named individuals were acting in the course and scope of their agency for their principal, their actions as agents bind their principal but do not convert the agents to parties to the contract. If the agents were acting outside of the scope of their agency, their actions might subject them to liability in an individual capacity but do not warrant the *creation* of a contract with an arbitration provision which they never entered. The relief Mr. Boling seeks is to create an agreement between him and the named individuals which does not exist. Idaho law does not contemplate that courts will create contracts for the parties that they did not in fact enter into.

The motion to stay arbitration as to Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher Benak, and Ron Ruebel and Clearwater Real Estates Investments LLC is granted.

It is so ordered.

Dated this 6th day of February, 2013.

Deborah A. Bail

Deborah A. Bail
District Judge

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above Decision and Order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated this 6th day of February, 2013.

Deborah A. Bail
District Judge

Mark Boling
Appellant, in pro se
21986 Cayuga Lane, Lake Forest, CA 92630
(949) 588-9222

NO.
A.M. 8:00 FILED P.M.

MAR 11 2013

CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDA IN THE STATE OF IDAHO

CLEARWATER REI, LLC, BARTON COLE COCHRAN, CHAD JAMES HANSEN, RONALD D. MEYER, CHRISTOPHER J. BENAK, AND ROB RUEBEL Plaintiffs/Counterdefendants/Respondents, vs. MARK BOLING, Defendant/Counter-Claimant/Appellant	Case No CV OC 1208669 NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT(S), CLEARWATER REI, LLC, BARTON COLE COCHRAN, CHAD JAMES HANSEN, RONALD D. MEYER, CHRISTOPHER J. BENAK, AND ROB RUEBEL, AND THE PARTY'S ATTORNEYS, REBECCA RAINEY, 910 W. Main St., Ste. 258, Boise, ID 83702, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, MARK BOLING, appeals against the above-named respondents to the Idaho Supreme Court from the Second Decision and Order Re: Motion to Stay Arbitration and 54(b) Certificate entered in the above-entitled action on February 7, 2013, Honorable Judge Deborah Bail, judge presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11 (a) (3) I.A.R.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal is whether the respondents, and each of them, should be compelled to arbitrate appellant's counterclaims against them as non-signatories to the agreement.

4. No order has been entered sealing all or any portion of the record.

5.(a) The reporter's transcript is hereby requested.

(b) The appellant requests the preparation of the following portions of the reporter's transcript: February 6, 2013 Hearing on Motion to Compel Arbitration.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R. and all documents included in the clerk's record, which is less than the full record, be scanned.

08/17/2012 Motion to Stay Arbitration
08/17/2012 Memorandum in Support of Motion
08/23/2012 Opposition to Motion to Stay Arbitration
08/23/2012 Declaration of Mark Boling in Support of Opposition to Motion to Stay Arbitration
09/07/2012 Reply Memorandum in Support of Motion and Application to Stay Arbitration
10/16/2012 Decision and Order Re: Motion to Stay Arbitration
12/10/2012 Notice of Motion and Defendant/Counter-Claimant's Motion to Compel Arbitration Memorandum of Points and Authorities in Support Thereof
12/10/2012 Affidavit of Mark Boling in Support of Defendant/Counter-Claimant's Motion to Compel Arbitration
12/31/2012 Notice of Hearing
01/30/2013 Memorandum in Opposition of Motion to Compel Arbitration
02/01/2013 Defendant/Counter-Claimant's Reply To Counterdefendants' Opposition To Motion To Compel Arbitration
02/07/2013 Second Decision and Order Re: Motion to Stay Arbitration and 54(b) Certificate

7. I certify:

(a) that a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Name and address: Susan Gambee, 200 W. Front St., Boise, ID 83702

(b) (1) [X] That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.

(2) [ ] That the appellant is exempt from paying the estimated transcript fee because _____

_____

(c) (1) [X] That the estimated fee for preparation of the clerk's or agency's record has been paid.

(2) [ ] That appellant is exempt from paying the estimated fee for preparation of the record because _____
_____.

(d) (1) [X] That the appellate filing fee has been paid.

(2) [ ] That appellant is exempt from paying the appellate filing fee because _____
_____.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho pursuant to § 67-1401(1), Idaho Code).

DATED THIS 8th day of MARCH, 2013.

Mark Boling
MARK BOLING
Appellant, in pro se

State of California)
) ss.
County of Orange)

MARK BOLING, being sworn, deposes and says:

That the party is the appellant in the above-entitled appeal, and that all statements in this notice of appeal are true and correct to the best of his or her knowledge and belief.

Mark Boling
Signature of Appellant

Subscribed and Sworn to before me this 8TH day of March, 2013.

(SEAL)

JOHN BALLESTEROS
Commission # 1896023
Notary Public - California
Orange County
My Comm. Expires Jul 18, 2014

Notary Public for California

Residence: Aliso Viejo, CA

My license expires on: July 18, 2014

Clearwater REI, LLC, et al. v. Boling, Case No. CV OC 1208669

CERTIFICATE OF SERVICE

I certify on March 11, 2013, I served the following document(s) in this action:

NOTICE OF APPEAL

by sending a true copy thereof by **ELECTRONIC SERVICE** pursuant to *I.R.C.P*, Rule 5 (b) (E) addressed to the party(s) served as follows:

Rebecca A. Rainey – rar@raineylawoffice.com
Attorney for Plaintiffs and Counterdefendants Clearwater REI, LLC, Barton Cole Cochran, Chad James Hansen, Ronald D. Meyer, Christopher J. Benak and Rob Ruebel.

The transmission of said document(s) to each party served was reported as complete and without error within a reasonable time after said transmission.

And by sending a true copy thereof by **REGULAR U.S. MAIL** addressed to the party(s) served as follows:

Susan Gambee (Court Reporter), 200 W. Front St., Boise, ID 83702.

Dated: March 11, 2013

Mark Boling
MARK BOLING

TO: Clerk of the Court
Idaho Supreme Court
451 West State Street
Boise, Idaho 83720
(208) 334-2616

NO. _____
A.M. 8:00 FILED P.M. _____

MAY 01 2013

CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

IN THE SUPREME COURT OF THE STATE OF IDAHO

CLEARWATER REI, LLC et al, Plaintiffs-Respondents, vs. MARK BOLING, Defendant-Appellant.	Docket No. 40809-2013

NOTICE OF TRANSCRIPT OF 34 PAGES LODGED

Appealed from the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, Deborah A. Bail, District Court Judge.

This transcript contains hearing held on: February 6, 2013

DATE: April 19, 2013

Susan G. Gambee, Official Court Reporter
Official Court Reporter,
Judge Deborah Bail
Ada County Courthouse
Idaho Certified Shorthand Reporter No. 18
Registered Merit Reporter

BT

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC., an Idaho limited company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONALD D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; RON RUEBEL, an individual, Plaintiffs-Respondents, and RE CAPITAL INVESTMENTS, LLC., a Delaware limited liability company, Plaintiff, vs. MARK BOLING, an individual, Defendant-Appellant.	Supreme Court Case No. 40809 CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 2nd day of May, 2013.

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

CERTIFICATE OF EXHIBITS

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICTOF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC., an Idaho limited company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONALD D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; RON RUEBEL, an individual, Plaintiffs-Respondents, and RE CAPITAL INVESTMENTS, LLC., a Delaware limited liability company, Plaintiff, vs. MARK BOLING, an individual, Defendant-Appellant.	Supreme Court Case No. 40809 CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

MARK BOLING

APPELLANT PRO SE

LAKE FOREST, CALIFORNIA

REBECCA A. RAINEY

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

Date of Service: MAY 1 3 2013

CERTIFICATE OF SERVICE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CLEARWATER REI, LLC., an Idaho limited company; BARTON COLE COCHRAN, an individual; CHAD JAMES HANSEN, an individual; RONALD D. MEYER, an individual; CHRISTOPHER J. BENAK, an individual; RON RUEBEL, an individual,

Plaintiffs-Respondents,

and

RE CAPITAL INVESTMENTS, LLC., a Delaware limited liability company,

Plaintiff,

vs.

MARK BOLING, an individual,

Defendant-Appellant.

Supreme Court Case No. 40809

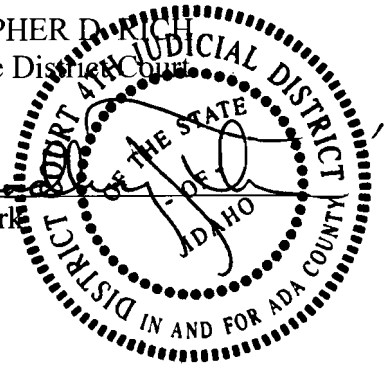
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 11th day of March, 2013.

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk



CERTIFICATE TO RECORD