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 8 UNITED STATES BANKRUPTCY COURT
 9 EASTERN DISTRICT OF CALIFORNIA
 10 (Sacramento Division)

12 In re:) Case No. 12-32118
 13 CITY OF STOCKTON, CALIFORNIA,) DC No. RJW-1
 14) Chapter 9
 Debtor.)
 15) **MOTION TO APPROVE**
 16) **STIPULATION BETWEEN THE CITY**
 17) **OF STOCKTON AND RABOBANK,**
 18) **N.A., FOR RELIEF FROM THE**
 19) **AUTOMATIC STAY**
 20) **(347 E. Weber Ave., Stockton, CA)**
 21) Date: August 26, 2014
 22) Time: 9:30 a.m.
 Judge: Hon. Christopher M. Klein
 Place: United States Bankruptcy Court
 501 I Street, 6th Floor
 Department C, Courtroom 35
 Sacramento, CA 95814

23 Rabobank, N.A., a national banking association ("RNA"), brings this motion pursuant to
 24 Local Bankruptcy Rule 4001-1 for an order approving the stipulation ("Stipulation") between
 25 RNA and the City of Stockton, California, the debtor in the above-captioned case (the "City"),
 26 granting RNA relief from the automatic stay with respect to the real property (the "Property")
 27 commonly known as 347 East Weber Avenue, Stockton, CA 95202, together with the rents and
 28 related personal property described in the senior deed of trust encumbering the Property in favor

1 of RNA. A true and correct copy of the Stipulation is attached hereto as **Exhibit A**.

2 The Property is encumbered by two junior deeds of trust in favor of the City. As set forth
3 in the Stipulation, the City does not oppose RNA's foreclosure of the senior deed of trust and, to
4 the extent the automatic stay applies, the City does not oppose the granting of relief to permit the
5 enforcement of RNA's rights and remedies with respect to the Property under applicable
6 nonbankruptcy law.

7 **Background**

8 RNA is the beneficiary under a Deed of Trust (the "RNA Deed of Trust") dated July 3,
9 2007, executed by Zachary A. Cort ("Borrower"), as trustor, and recorded in the Official Records
10 of San Joaquin County on July 20, 2007, as Document No. 2007-132006, encumbering the
11 Property. The RNA Deed of Trust secures a loan (the "RNA Loan") from RNA to Borrower in
12 the original principal amount of \$630,000.00.

13 The City is the beneficiary under the following (collectively, the "City Deeds of Trust"):

14 (a) that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing
15 dated as of August 10, 2010, executed by The Cort Group, Inc., as trustor, and recorded in the
16 Official Records of San Joaquin County on August 26, 2010, as Document No. 2010-112176;
17 and (b) that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture
18 Filing dated as of February 1, 2012, executed by Juice 101, LLC, as trustor, and recorded in the
19 Official Records of San Joaquin County on March 27, 2012, as Document No. 2012-037493.

20 The City Deeds of Trust encumber the Property and constitute liens that are junior and
21 subordinate to the lien of the RNA Deed of Trust.

22 RNA has declared a default by Borrower under the RNA Loan, and RNA seeks to
23 foreclose the RNA Deed of Trust. The Property is not the City's property and is not protected by
24 the automatic stay. However, the City's liens against the Property under the City Deeds of Trust
25 are City property, and foreclosure of the RNA Deed of Trust will have the effect of extinguishing
26 the City's liens against the Property under applicable state law.

27 **Jurisdiction and Venue**

28 The Court has jurisdiction over this motion and the relief requested pursuant to 28 U.S.C.

1 §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C §§ 1408 and 1409.

2 **Relief Requested**


3 By this Motion and pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure
4 and Section 362(d) of the Bankruptcy Code (applicable to this case by Section 922 of the
5 Bankruptcy Code), RNA seeks an order from the Court approving the Stipulation. Although the
6 Property itself is not the City's property, the automatic stay may apply to protect the City's
7 interests from being extinguished by RNA's foreclosure. See *In re 48th Street Steakhouse, Inc.*,
8 835 F. 2d 427, 430-1 (2d. Cir. 1987); accord, *In re Bibo, Inc.*, 200 B.R. 348 (9th Cir. BAP 1996)
9 [senior lienholder's action in foreclosing against real property on which debtor held junior lien
10 violated automatic stay], appeal dismissed as moot, 139 F.3d 659 (9th Cir. 1998).

11 The Stipulation should be approved because City does not oppose foreclosure of the
12 RNA Deed of Trust and does not oppose granting RNA relief from the automatic stay. In
13 exercising its rights and remedies, RNA seeks no monetary relief from the City.

14 WHEREFORE, RNA requests that the Court enter an order approving the Stipulation in
15 the form submitted herewith, and granting such other relief as the Court may deem just and
16 proper.

17 Dated: August 12, 2014

BOUTIN JONES INC.
Attorneys at Law

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19 By: 

Robert J. Wood

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21 Attorneys for Rabobank, N.A.