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9 Trustee of Radical Bunny, L.L.C.

10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:
13 MORTGAGES LTD.,
14 Debtor.

Chapter 11

Case No. 2:08-bk-07465-RJH

**RADICAL BUNNY'S PREHEARING
MEMORANDUM IN SUPPORT OF
APPLICATION PURSUANT TO 11 U.S.C.
§ 503(b)(3)(D) AND (4) FOR
ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE CLAIM OF CREDITOR
RADICAL BUNNY**

Hearing Date: November 18, 2009
Hearing Time: 1:30 p.m.
Location: 230 N. First Ave., 6th Floor,
Courtroom 603, Phoenix, AZ

Related Docket Nos. 1888, 2014, 2027, 2088 &
2395

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23 Creditor RADICAL BUNNY, L.L.C. ("RBLLC"), by and through its duly
24 authorized attorneys, hereby submits its prehearing memorandum ("Prehearing
25 Memorandum") in support of its "Application Pursuant To 11 U.S.C.
26 § 503(B)(3)(D) and (4) For Allowance And Payment Of Administrative Claim Of
27 Creditor Radical Bunny" ("Application"), DE 1888. In its Application, RBLLC
28 requests that this Court award the amount of **\$572,945.50** in attorneys' fees, and

1 **\$22,852.75** in costs (collectively the “Substantial Contribution Claim”), as an
2 administrative expense, on the grounds that such fees and costs were actual,
3 necessary expenses incurred by RBLLC as the reasonable compensation for
4 professional services rendered by RBLLC’s attorneys, DeConcini McDonald
5 Yetwin & Lacy, P.C. (“DMYL”) in activities that made a substantial contribution to
6 this Chapter 11 bankruptcy case.

7 This Prehearing Memorandum is supported by a “Joint Statement of
8 Material Facts of Radical Bunny and Liquidating Trust for Application Pursuant to
9 11 U.S.C. § 503(b)(3)(D) and (4) for Allowance and Payment of Administrative
10 Claim of Creditor Radical Bunny”, DE 2395, referenced herein as “JTS, ¶ _”, and
11 the record of this case, including (1) “Radical Bunny, L.L.C.’S Reply to Omnibus
12 Objection of Liquidating Trust to Applications Pursuant to 11 U.S.C.
13 § 503(B)(3)(D) and (4) For Allowance And Payment Of Administrative Claims”, DE
14 2027; and (2) “Radical Bunny, L.L.C.’S Supplemental Memorandum Regarding
15 Effect of Change of Management and Counsel on Application Pursuant to 11
16 U.S.C. § 503(B)(3)(D) And (4) For Allowance And Payment Of Administrative
17 Claim”, DE 2088. Capitalized terms used, but not defined herein, are defined in
18 the JTS.

19
20 **I. GENERAL LEGAL STANDARDS APPLICABLE TO CLAIM**

21 **A. Statutory Standards Mandating Award of Administrative Expenses**

22 Section 503(b) of the Bankruptcy Code¹ provides that administrative
23 expenses (other than those allowed under Section 502(f)) “*shall* be allowed” after
24 notice and a hearing (emphasis added). Pursuant to Section 503(b)(3), “the
25 actual, necessary expenses, other than compensation and reimbursement
26 specified in paragraph (4) of this subsection” incurred by certain categories of
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28 ¹ References in this Application to the “Bankruptcy Code” shall mean 11 U.S.C. §101 *et seq.*; references to “Section” or “§” shall be to the applicable section of the Bankruptcy Code.

1 entities are entitled to administrative priority. One such category entitled to
2 administrative priority status is for a creditor “making a substantial contribution in
3 a case under chapter 9 or 11 of this title”. 11 U.S.C. § 502(b)(3)(D). Further, an
4 entity whose expenses are allowable under Section 503(b)(3) may seek
5 reimbursement of expenses, as an administrative priority for reasonable
6 compensation for professional services rendered by the creditor’s attorney under
7 11 U.S.C. § 503(b)(4).

8 B. General Case Law Standards for Substantial Contribution

9 Pursuant to Section 503(b)(3), RBLLC must satisfy two tests to be entitled
10 to allowance of an administrative claim. First, RBLLC must be a creditor of the
11 Debtor’s Estate. It is undisputed that RBLLC is a creditor of the Debtor. See JTS,
12 ¶ 14. Second, RBLLC must have made a “substantial contribution” to the
13 bankruptcy case. See *In re Cellular 101, Inc.*, 377 F.3d 1092, 1096 (9th Cir. 2004)
14 (allowing administrative claims of creditors).
15

16 “Substantial contribution” is not defined in the Bankruptcy Code, but the
17 principal legal test set by the Ninth Circuit Court of Appeals is “the extent of
18 benefit to the estate.” *In re Cellular 101, Inc.*, 377 F.3d at 1096. The Court further
19 determined that a creditor’s self-interest, or the benefit to the creditor from the
20 creditor’s efforts is not determinative when any such self-interest is “outweighed
21 by the extent of the benefit those efforts conferred on the estate.” *In re Cellular*
22 *101, Inc.*, 377 F.3d at 1097-1098. Rather, the fact that the creditor may also have
23 benefitted from contributions to the estate does not preclude reimbursement. See
24 *In re Cellular 101, Inc.*, 377 F.3d at 1098.

25 Other courts have also recognized that the value of a creditor’s contribution
26 to the resolution of a chapter 11 proceeding matters is the key determination, and
27 not the creditor’s motivation or intent in making the contribution. The courts
28 recognize that the self-interest of a creditor is presumed to be the case, but that it

1 does not limit recovery for a substantial contribution to the Estate. See *In re*
2 *Celotex Corp.*, 227 F.3d 1336, 1338-1339 (11th Cir. 2000); *In re DP Partners Ltd.*
3 *Partnership*, 106 F.3d 667, 672-3 (5th Cir. 1997). See also the concurring opinion
4 of Circuit Judge Brunetti in *In re Cellular 101, Inc.*, 377 F.3d at 1098, stating that
5 he would go further and hold that a creditor's motivation is not even relevant in
6 deciding a Section 503(b) claim.

7 **II. Categories of Benefit Provided to the Estate in This Case**

8 RBLLC's Substantial Contribution Claim is calculated on the basis of DMYL
9 attorneys' fees and costs incurred primarily in three discrete areas: (1)
10 formulation of a plan of reorganization; (2) preservation of Estate assets; and (3)
11 objecting to and reaching settlements with the Debtor's borrowers. These three
12 areas of substantial contribution need to be considered in light of the unique
13 nature of this case. "The determination of substantial contribution must be made
14 on a case by case basis." *In re Catalina Spa & R.V. Resort, Ltd.*, 97 B.R. 13, 18
15 (Bankr. S.D. Cal. 1989).

16 This is a rare and unusual Chapter 11 case. First, the Debtor is itself a
17 mortgage lender, and the major asset of the Estate was the Debtor's interest in its
18 own Arizona real estate loans. Second, the Debtor owned only a fractional
19 interest in its own loans, with more than 80% of such loans actually being owned
20 by the Investors², and managed by the Debtor. Finally, this case is unusual
21 because it was prompted by the suicide of Scott Coles, who had controlled the
22 pre-petition management of the Debtor. Mr. Coles' death occurred during an
23 unusual rapidly declining real estate market. This left a Debtor with continually
24 changing post-petition management with uncertain motivations facing numerous
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² The Loan Portfolio was approximately \$970 million as of the filing, with approximately 2,700 Investors
28 having funded about \$770 million and 900 Participants in RBLLC having funded about \$200 million. See
JTS ¶¶ 5 & 17.

1 claims from its borrowers, investors and other creditor claims based on actions
2 taken by Mr. Coles before his death. See JTS ¶¶ 1-3, 12 & 15-17; Freeman
3 Declaration, ¶ 9.

4 RBLLC was the only major secured creditor of Mortgages Ltd. at the
5 inception of this case and during the proceedings. Although the Liquidating Trust
6 disputes that RBLLC was secured, Section 502(a) of the Bankruptcy Code
7 provides otherwise. RBLLC filed its initial proof of claim, the RBLLC POC No. 33,
8 on July 17, 2008, as a secured claim. An amendment increased the initial listed
9 claim of \$196,617,758.05 to \$197,232,758.05. See JTS ¶¶ 5 & 9. A proof of claim
10 constitutes "prima facie evidence of the validity and amount of the claim" pursuant
11 to Rule 3001(f) of the Federal Rules of Bankruptcy Procedure ("FRBP"). Under
12 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest
13 objects. No objection was filed to RBLLC's proof of claim as required by Section
14 502 during the time period for which the Substantial Contribution Claim is made,
15 this Court never ruled that RBLLC was not secured, and RBLLC's secured
16 interest was recognized in the confirmed Plan.

17 RBLLC POC No. 33 was supported by a Declaration with attachments
18 listing the 99 separate promissory notes that evidenced the debt, and identified
19 RBLLC's security interest in all the Debtor's assets. The RBLLC POC No. 33
20 attached copies of the UCC financing statements that had been filed and
21 recorded by the Debtor for RBLLC. Attaching the evidence that RBLLC's security
22 interest had been perfected satisfied the requirements of Rule 3001(d), FRBP.

23 The day after the RBLLC POC No. 33 was filed, on July 18, 2008, the
24 Debtor filed its schedules. The Debtor's schedules listed the \$197,232,758.00
25 owed to RBLLC as liquidated and undisputed and not contingent. See JTS ¶ 8.
26 The Debtor scheduled the almost \$200 million dollars in debt as unsecured, rather
27 than as secured as provided in RBLLC POC No. 33. The secured claim listed in
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1 RBLLC POC No. 33 superseded the unsecured status listed in the schedules
2 pursuant to Rule 3003(c)(4), FRBP.

3 Mortgages Ltd.'s schedules listed total undisputed creditor claims of
4 \$209,427,144.00, of which RBLLC consisted of \$197,232,758.00 (94%)³. As the
5 record in this case demonstrates, RBLLC was the only creditor to subordinate its
6 interest to: (i) allow use of cash collateral; (ii) financing for working capital for the
7 Debtor; and, (iii) financing for funding for a borrower's project. No other creditor
8 or investor contributed any funds to the Debtor or its borrowers during the
9 pendency of the case. See JTS ¶¶ 55-57, 58-60, 67-72, 76-78; DE 198.

10 Further, throughout the case, the OIC and other Investors repeatedly
11 argued that their interests were not part of the Mortgages Ltd. bankruptcy case
12 and opposed every motion that sought to impact their interest. Notwithstanding
13 these continuing objections by the Investors to avoid having their interests
14 become part of these proceedings, RBLLC/DMYL's proposed plan brought the
15 interests of the Investors into loan LLCs that meshed their investments with the
16 RBLLC collateral for the benefit of all of the people who had put money into
17 Mortgages Ltd. The Plan that was confirmed accomplished exactly that result.

18 Unlike any other party to this case, RBLLC/DMYL deferred its own interests
19 for the benefit of all creditors and the professionals for the Debtor and all
20 committees. RBLLC/DMYL (and its 900 participants) should not be subordinated
21 yet again by denying payment of its professionals, particularly after it has funded
22 millions of dollars for payment of the other professionals in this case.
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26 ³ The Liquidating Trustee may contend that the interests of RBLLC were represented by the Official
27 Committee of Unsecured Creditors. This contention is wrong for two reasons: (1) RBLLC was never a
28 constituent of that Committee because it was a presumed secured creditor throughout the case; and (2)
had RBLLC been a constituent of that Committee, its claim would have held at least 98% of the group and
DMYL would have been employed to represent that committee.

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A. Benefit Provided Through Formulation of a Plan of Reorganization

Services that substantially contribute to a case include formulating, negotiating and drafting a plan of reorganization that is eventually confirmed. *See, e.g., In re Cellular 101, Inc.*, 377 F.3d at 1097; *In re Celotex Corp.*, 227 F.3d at 1338-1339. RBLLC/DMYL contributed substantially to the reorganization through its consideration of the needs of all creditors in formulating, negotiating and drafting a plan of reorganization in cooperation with the OIC. RBLLC/DMYL did not contribute “incidentally” or “minimally” but rather made a substantial contribution in providing specified services that led to a confirmable plan in this case which are reimbursable as an administrative expense in this case. *See In re Cellular 101, Inc.*, 377 F.3d at 1098.

RBLLC/DMYL raised plan issues early in the case and consistently sought to bring the parties together. Despite a clear lack of equity and lack of leadership experience of the Debtor post-Scott Coles, the Debtor took an antagonistic approach to the real parties in interest in this case. Recognizing these challenges led RBLLC/DMYL to develop a proposed plan structure that tracked the real financial picture—RBLLC and the Investors had put up \$970,000,000.00 for loans to borrowers. Each loan and borrower had different percentages of funds from Investors versus RBLLC, and each borrower and property that was collateral for a respective loan involved different issues to be considered. It made sense to allocate control over the decisions about a respective loan by placing each loan into an entity that reflected the respective percentage of RBLLC and Investor funds in that loan so that the real parties in interest could make decisions for that loan.

In an effort to accomplish this goal, RBLLC/DMYL met with the OIC and discussed different aspects of a reorganization plan. The meetings then expanded to include other parties, including the Unsecured Creditor Committee

1 and other investors that had retained their own counsel. On October 9, 2008, the
2 original outline for a plan was created by DMYL and sent to the counsel for the
3 OIC. See e-mail from Shelton L. Freeman and attached plan outline (the “Plan
4 Outline”) attached as **Exhibit 1**.

5 The major concepts in the Plan Outline are exactly the concepts contained
6 in the confirmed Plan of Reorganization:

- 7 • Form Loan LLCs
 - 8 ○ Exchange Investor Interests and RBLLC collateral interests for
 - 9 fractional membership in each loan LLC
 - 10 ○ Any shortfall in value treated as unsecured claim
- 11 • Trust for Unsecured Claims
 - 12 ○ Pursuit of avoidance claims
 - 13 ○ Value in Debtor’s real property
- 14 • Treatment for Value to Loan
- 15 • Payment of Administrative Claims
 - 16 ○ Debtor, all committees and RBLLC
- 17 • Treatment of RBLLC
 - 18 ○ Payment from identified real property
 - 19 ○ Exchange secured claims for loan LLC membership interests
 - 20 ○ Deemed secured
 - 21 ○ Administrative claim for fees
 - 22 ○ Avoidance actions against RBLLC settled
- 23 • Treatment of Investors
 - 24 ○ Exchange interests for loan LLC membership interests
 - 25 ○ Ownership in notes validated
 - 26 ○ Avoidance actions against Investors settled

27 The Plan Outline, like the confirmed Plan, was not solely for the benefit of
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1 RBLLC. It resolved thousands of potential avoidance claims, eliminated the
2 concerns about the ability to manage each loan and provided a mechanism for all
3 creditors to share in the recoveries by a Trust formed to collect assets and pursue
4 third party claims.

5 In furtherance of this plan proposal, the first draft of the Plan (“DMYL Plan”)
6 was sent out by DMYL on November 4, 2008, to counsel for the OIC. See e-mail
7 to Cathy Reece and attached DMYL Plan in **Exhibit 2**. Supporting documents for
8 the Plan were drafted by DMYL and circulated on various dates in October and
9 November of 2008. See e-mails to Steven Goode in **Exhibit 3**.

10 A comparison of the initial draft of the DMYL Plan and the confirmed Plan
11 shows only minor adjustments. In light of the appointment of the RBLLC Trustee
12 and the subsequent withdrawal of support, the OIC removed RBLLC as a co-
13 proponent of the Plan and adjusted provisions, but the basic structure of Loan
14 LLCs, resolving avoidance claims and forming a Trust to pursue avoidance claims
15 remained intact. The contribution by RBLLC/DMYL is self-evident in the
16 confirmed Plan—even after the RBLLC Trustee withdrew its support, the OIC
17 went forward with the substantially identical terms because of the benefits
18 provided to all parties by the DMYL Plan. Despite various objections at
19 confirmation, this same structure eventually received almost unanimous support
20 of all parties and was confirmed.

21 The Debtor never came up with a viable plan and even the Liquidating
22 Trustee has recognized the futility of the Debtor’s efforts. In its objection to the
23 fees incurred by the Debtor’s bankruptcy counsel, the Liquidating Trustee
24 recognized that “no good faith effort was made to create a consensual plan with
25 the Official Committee of Investors.” See DE 1937, p. 11, lines 24-25. While the
26 post-Coles management of the Debtor ignored the interests of the creditors of this
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1 Estate, RBLLC/DMYL was developing the DMYL Plan and working with the OIC
2 for a consensual plan for the benefit of all creditors.

3 Further, the Liquidating Trust would not exist today but for the terms of the
4 DMYL Plan. Its professionals would have no source of payment for their fees.
5 Under the Confirmed Plan, the Loan LLC's were pledged as collateral for the exit
6 financing that provided funding for the Liquidating Trust. RBLLC has again
7 subordinated its secured claims [now membership interests] for \$20,000,000.00 to
8 pay professionals and operate ML Manager and the Liquidating Trust. It is
9 offensive to suggest that the 900 participants of RBLLC should be further
10 subordinated by denying its professionals compensation from the very funds
11 established to pay for all such claims, while the counsel for various Investor
12 Committees were paid from those same funds.

13 With respect to the intention of the parties that RBLLC/DMYL receive
14 compensation from this Estate, one clear provision that was not altered was the
15 definition of "Professional Persons" in Section 2.73 of the confirmed Plan
16 identifies the professionals with administrative claims to be paid from the Estate.
17 This provision remained unaltered from the inception of the Plan Outline and
18 DMYL Plan; that definition was not changed from the OIC's initial filed plan (then
19 in Section 2.72), and it was not changed from the DMYL Plan (then in Section
20 2.60). The confirmed Plan, with almost unanimous approval, contemplated that
21 Professional Persons includes counsel for RBLLC. In contrast to the specific
22 reference to RBLLC, there are no references to separate counsel for groups of
23 individual Investors represented by the OIC as "Professional Persons". See DE
24 1297 & 1532; JTS ¶ 28.

25
26 In that same regard, the payment of the fees for the OIC and the VTL were
27 directly contrary to RBLLC's interest. These parties were not direct creditors of
28 the Debtor and refused to subordinate their interests in the Debtor's loans for the

1 benefit of the bankruptcy estate and the creditors. Instead, they placed that entire
2 burden of financing the Estate on RBLLC. Proposing the payment of these
3 professionals in the Plan Outline and DMYL Plan provides significant benefit to
4 those respective parties.

5 The Substantial Contribution Claim is limited to services provided by DMYL
6 to RBLLC prior to RBLLC's bankruptcy and services provided while DMYL
7 represented RBLLC as debtor and debtor in possession in RBLLC's subsequent
8 bankruptcy. No services provided to the RBLLC Trustee are included in the
9 Substantial Contribution Claim. After a trustee was appointed in the RBLLC
10 Case, the RBLLC Trustee objected to the OIC's initial and amended Plan. The
11 Liquidating Trustee claims that RBLLC/DMYL provided no net benefit to the
12 Estate based on those objections. But if RBLLC/DMYL had not created the Plan
13 Outline and the DMYL Plan, there would have been higher administrative
14 expenses of the OIC and the Estate regardless of positions later taken by the
15 RBLLC Trustee. It is undeniable that RBLLC/DMYL provided services that, along
16 with the services of others, eventually led to the confirmed Plan. The RBLLC
17 Trustee is not an agent of RBLLC but is the representative of the RBLLC estate
18 under 11 U.S.C. §323. Later actions taken by the RBLLC Trustee cannot offset
19 the substantial benefit to the Mortgages Ltd. Estate provided by RBLLC/DMYL.
20

21 B. Benefit Provided Through Preservation of Estate Assets

22 1. Benefit Provided by Use of RBLLC's Cash Collateral

23 RBLLC allowed its cash collateral to be used to fund the Debtor's post-
24 petition operations. See JTS, ¶¶ 56-57. This tangible benefit ensured that the
25 Debtor could continue to operate post-petition. RBLLC was receiving about
26 \$2,000,000.00 per month in interest payments prior to the Debtor's bankruptcy.
27 After the filing, RBLLC received no payments. See JTS, ¶¶ 6-7. Instead,
28 RBLLC/DMYL agreed to the use of cash collateral, which both kept the Debtor

1 operating, and paid the professionals other than DMYL. During this case,
2 including post-petition retainers, interim payments of at least \$1,350,000.00 were
3 made to Jennings, Strouss & Salmon, Greenberg Traurig, Fennemore Craig, and
4 Nussbaum & Gillis, all from RBLLC's cash collateral. See OIC's Approved
5 Amended Disclosure Statement at DE 1531-12, Exhibit F. By structuring those
6 operational funds, RBLLC/DMYL allowed this case to avoid collapse and keep the
7 Debtor's employees paid, all to RBLLC's (and its professionals) detriment. It is
8 undisputed that RBLLC has no other source of payment (JTS, ¶ 6) and any
9 recovery for RBLLC under the confirmed Plan is subordinate to repayment of the
10 exit financing. If DMYL does not receive compensation from the Mortgages Ltd.
11 Estate, the only source of payment will be plan distributions to RBLLC, which will
12 only occur after repayment of the exit financing. See JTS ¶¶ 25 & 56-57. The
13 Liquidating Trust is asking that RBLLC/DMYL be the only Professional Person
14 that is subordinated to repayment of the exit financing.
15

16 No other party contributed any funds to the Debtor and the Investors
17 specifically objected to use of their funds and sought and obtained an order from
18 this Court that interest payments were to be turned over to Investors. The 900
19 participants in RBLLC did not receive almost \$24 million in interest payments
20 during this case. To now deny this Application would effectively subordinate them
21 once again to the interests of the other professionals and other parties receiving
22 the benefit of the use of their cash collateral. See JTS ¶¶ 7 & 55-60.

23 2. Benefit Provided in Connection With Post-Petition Financing

24 RBLLC/DMYL benefitted the Estate through objections to initial proposed
25 noncompetitive financing that would have prevented a successful reorganization.
26 In addition to opposing the burdensome financing proposed by the initial Debtor
27 management and professionals, and ferreting out the conflicts that existed
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1 amongst those parties, RBLLC/DMYL also played a vital role in the financing that
2 was put in place.

3 The Debtor initially proposed a \$5,000,000.00 working capital loan that was
4 ultimately revealed to be tied to a \$124,100,000.00 loan that would be made for
5 the purpose of lending additional funds to specified borrowers. The contemplated
6 scope of the required security for these loans was all assets of the Debtor and all
7 interests of the Investors. The terms of the proposed loans were unfavorable, and
8 it was discovered that the Debtor's financial expert had denied access to the
9 financial records of the Debtor to any lender other than the proposed lender,
10 virtually eliminating competitive financing alternatives. RBLLC/DMYL, along with
11 other creditors and individual investors (including an "unofficial" committee of
12 investors), objected to the Debtor's attempt to encumber virtually all assets of its
13 Estate and raised objections on behalf of all the creditors of the Debtor's Estate
14 as to whether the proposed financing would benefit the Estate. See JTS ¶¶ 61-62
15 & 64.

16 RBLLC/DMYL benefitted the Estate by locating alternative post-petition
17 financing on more favorable terms, and urged the Debtor to consider other
18 financing alternatives. RBLLC/DMYL located a lender willing to provide funding
19 without requiring a lien on all assets of the Estate, and that lender appeared, with
20 a check, at an early financing hearing. See JTS ¶ 63. Arranging for alternative
21 DIP financing, whether or not it is used, provides actual benefit and a substantial
22 contribution. See *In re FF Holdings Corp.*, 343 B.R. 84, 85 & 87 (D. Del. 2006).
23 In this case, the availability of competitive financing actually ensured that the
24 Debtor abandoned the proposed financing and obtained more favorable DIP loan
25 terms, even though the Debtor elected not to use any lenders located by
26 RBLLC/DMYL. See JTS ¶¶ 63-67. RBLLC/DMYL's continued objections and
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1 alternative financing efforts for DIP financing ultimately led to the Debtor's
2 obtaining more favorable DIP financing terms to the actual benefit of the Estate.

3 RBLLC/DMYL was involved in extensive negotiations with the prospective
4 lenders to structure a loan that provided the Debtor and Estate with much needed
5 working capital to keep the lights on and the employees paid current. It was also
6 important to keep the Debtor viable so that borrowers were not encouraged to
7 default on obligations to a failed lender. Since RBLLC's collateral was the only
8 asset available to sustain the Debtor, RBLLC bore the brunt of all the debt
9 incurred post-petition—neither the Investors nor any other creditor were ever
10 subjected to subordination during this case. A large portion of the DIP financing
11 was paid to professionals of the Estate, as well as other lenders to Mortgages
12 Ltd., but only \$50,000.00 of the \$5,000,000.00 went to RBLLC. See JTS ¶¶ 66-
13 72.
14

15 Between cash collateral used and post-petition working capital financing
16 subordinated to by RBLLC, it is estimated that the Estate benefitted by at least
17 \$5,600,000.00. The initial use of cash collateral in the budget for 5 weeks
18 [7/12/08 – 8/9/08] was for \$304,101.00 in payroll and other operating expenses.
19 (DE 155 at p. 19). Under the terms of the Interim DIP Loan order entered on
20 August 8, 2008 (DE 323), the Debtor was required to use available funds (i.e.
21 cash collateral) rather than take advances of the Interim DIP loan, although it
22 contemplated payments to professionals of over \$1 million. Final approval of the
23 \$5,000,000.00 DIP (DE 459) was entered on August 28, 2008.

24 The amount sought by RBLLC/DMYL is just over ten percent (10%) of the
25 amount of funding it provided to this Estate. In light of the interest rates being
26 paid on other loans in this case, ten percent (10%) would be a conservative
27 adequate protection payment for the amounts subordinated and a fraction of the
28 \$13,000,000.00 sought in total administrative claims.

1 3. Benefit Provided to Preserve Debtor’s Collateral and Funds

2 The Centerpoint Loans are another clear example where RBLLC provided
3 significant benefit to others in this case but took all the risk. When the Tempe
4 Land Company parties (“TLC Parties”) convinced the Debtor that they needed
5 funds to protect their buildings, they filed emergency pleadings seeking to
6 subordinate all the interests in the Centerpoint Loans to new financing. On
7 shortened notice, objections were filed and the Debtor and TLC Parties pled its
8 dire position to the Court. Consistent with its prior objections, the OIC contended
9 that the Investors’ interests could not be subordinated to a post-petition loan
10 because they were not part of the Mortgages Ltd. bankruptcy estate. The TLC
11 Parties and the Debtor alleged millions of dollars in damage were imminent if
12 immediate steps were not taken to seal the building from the monsoon storms and
13 for air conditioning to prevent warping of the interior finishes. In light of the dire
14 circumstances presented, an agreement was eventually structured where an
15 approved budget for emergency items would be approved subordinating only
16 RBLLC’s collateral, not the Investors. The efforts involved to structure that
17 transaction took intense legal efforts and numerous negotiations with the alternate
18 lenders that were involved and the pledge of all certain interests in the Loan. See
19 JTS ¶¶ 73-77.
20

21 The Investors put no funds in the post-petition loan and did not subordinate
22 their interest. RBLLC benefitted the Debtor and the Investors to its own detriment
23 by subordinating its collateral, the Debtor’s interest in the Centerpoint Loans, to
24 post-petition financing of \$2,800,000.00. See JTS ¶¶ 77-78.

25 To add insult to injury, the Debtor failed to properly advance or manage the
26 emergency funds and allowed the TLC Parties to squander the loan funds and
27 divert them from the Centerpoint project. See JTS ¶¶ 79-80. RBLLC/DMYL was
28 the first party to bring this to the Court’s attention and seek relief. See DE 987.

1 Although the Debtor eventually took action and attempted to thwart RBLLC/DMYL
2 from pursuing relief, the Debtor failed to garner any recovery to reduce the
3 priming lien. Instead, that loan was paid off by the exit financing under the Plan,
4 which further subordinated the RBLLC interests to pay liens to which RBLLC had
5 already subordinated. Now the Liquidating Trust asks the Court to triple-
6 subordinate RBLLC by deferring payment of its professionals.

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8 4. Overview of Benefits to Estate of Preservation of Assets

9 RBLLC/DMYL provided unique and tangible benefits to the Estate that were
10 not provided by any creditor. No other creditor ensured that funds were available
11 for continued operations while non-competitive financing was threatening the
12 interests of all creditors of the Estate. RBLLC's interests were sacrificed for the
13 benefit of all the creditors of the Estate and the Investors. Some of the services
14 for which RBLLC/DMYL seeks payment were provided at the request of the OIC.
15 It is inequitable to deny the contributions made by RBLLC/DMYL in this unique
16 case.

17 C. Benefit Provided Through Settlement Objections and Negotiations

18 The final area included in the Substantial Contribution Claim is for services
19 related to negotiations and settlements with Mortgages Ltd.'s borrowers. The
20 services provided in connection with borrower settlements both assisted with the
21 reorganization process and preserved assets of the Estate for the benefit of all
22 creditors. See JTS ¶ 82.

23 Throughout the case, the Debtor's new management and counsel
24 negotiated numerous settlements with borrowers without any consultation of the
25 real parties in interest, RBLLC and the Investors. Many of the settlements would
26 have significantly impaired the value of the interest in the ML Loans. That resulted
27 in numerous motions to approve settlements that required objections and
28

1 significant efforts to address the respective issues of a given borrower, the
2 collateral and impact of the proposed resolution.

3 In some instances, modifications to proposed settlements were able to be
4 negotiated that lessened the impact of what the Debtor had done. One example of
5 this was on the Rightpath loans. The settlement proposed by the Debtor involved
6 a significant modification of those loans to the detriment of the Estate. Both
7 RBLLC/DMYL and the OIC met with Rightpath and DMYL was an integral part of
8 achieving the eventual settlement that was approved. The benefits achieved by
9 these efforts alone exceed the amount requested.

10 Numerous other borrower settlements were filed by the Debtor and while
11 the parties were able to resolve certain of them, others were completely rejected
12 (e.g. Centerpoint). However, in an effort to bring the real parties in interest into the
13 initial settlement discussions, RBLLC/DMYL scheduled a meeting with the Debtor,
14 its Board Members and the OIC to discuss a protocol for decision-making. As a
15 result of a lengthy meeting, a Letter Agreement was prepared by DMYL whereby
16 the Debtor, RBLLC and OIC agreed to coordinate all future settlements and
17 minimize the need for future objections to settlements by requiring that RBLLC
18 and the OIC had to approve any 9019 motions filed by the Debtor. See Letter
19 Agreement dated October 1, 2008 attached as **Exhibit 4**, and filed at DE 685-1.
20

21 It is plain from the Letter Agreement that RBLLC/DMYL was significantly
22 involved in all of the Settlements being proposed by the Debtor and was the only
23 true creditor watching out for the interests of the Estate in that process.
24 RBLLC/DMYL substantially contributed to this process for the benefit of the Estate
25 and is entitled to compensation for its efforts.

26 Although the Liquidating Trustee argues that such efforts were duplicative
27 with Estate professionals, RBLLC/DMYL focused on the loans with the most
28 significant effect on the Estate, and coordinated objections to unsatisfactory

1 settlements with the OIC. RBLLC/DMYL's actions ensured that the Debtor did not
2 pursue final court approval for an unfavorable settlement with the TLC Parties that
3 would have given away assets of the Estate, including a lien on 2.76 acres of
4 excess land worth more than \$10 million dollars. See JTS ¶ 85.

5 The services provided by DMYL in connection with settlements were
6 intertwined with the reorganization process and the preservation of assets of the
7 Estate. These services benefitted all creditors of the Estate.

8 D. Fees Incurred In Connection With Application Are Recoverable

9 Fees and costs incurred in preparing and litigating RBLLC's Application are
10 also recoverable in connection with the Substantial Contribution Claim. In *North*
11 *Sports, Inc. v. Knupfer (In re Wind N' Wave)*, 509 F.3d 938, 943-944 (9th Cir. 2007),
12 the Ninth Circuit Court of Appeals ruled that where a creditor receives attorney's
13 fees under Section 503(b)(4), the time and expenses devoted to securing the
14 attorney's fee award are also compensable. The decision relied upon Ninth
15 Circuit precedent, including *In re Nucorp Energy*, 764 F.2d 655, 657 (9th
16 Cir.1985). See also *In re Catalina Spa & R.V. Resort, Ltd.*, 97 B.R. 13, 21 (Bankr.
17 S.D. Cal. 1989) ("As an attorney seeking fees under § 503(b) must apply to the
18 court in the same manner as an attorney under § 330, this court cannot
19 reasonably justify a different treatment for purposes of compensation for fee
20 applications"). The amount of fees incurred will be supplemented upon this
21 Court's determination that RBLLC provided a substantial contribution in this case.

22 **CONCLUSION**

23
24 WHEREFORE, for all of the foregoing reasons, RBLLC asks that the Court
25 allow the Substantial Contribution Claim as an administrative priority expense,
26 and direct that it be paid to DMYL as provided in the Confirmation Order. RBLLC
27 further requests such additional and other relief as is just and proper under the
28 circumstances of this Chapter 11 case.

1 DATED this 12th day of November, 2009.

2 DECONCINI McDONALD YETWIN & LACY, P.C.

3
4
5 BY /s/ SHELTON L. FREEMAN
6 Shelton L. Freeman
7 Counsel to Radical Bunny, L.L.C. and
8 Special Counsel to G. Grant Lyon, Chapter
9 11 Trustee of Radical Bunny, L.L.C.

10 COPIES sent via the U.S. Bankruptcy
11 Court's ECF noticing system this
12 12th day of November, 2009.

13 **COPIES** served by e-mail or
14 U.S. Mail this 12th day of
15 November, 2009, to:

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By /s/ Melissa S. Archibald

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From: Shelton Freeman [TFreeman@dmylphx.com]
Sent: Thursday, October 09, 2008 2:48 PM
To: 'REECE, CATHY'
Subject: FW: RB Outline-version 2
Attachments: Plan.Outline.02.doc

Tony

From: Melissa Archibald
Sent: Thursday, October 09, 2008 2:47 PM
To: Shelton Freeman
Cc: Heidi Cooling
Subject: RB Outline-version 2

Here you go!

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This communication is confidential and is intended only for the use of the individual or entity named above. If you have received this communication in error, please immediately destroy it and notify the sender by reply email or by telephone at 602-282-0500.

I. GENERAL STRUCTURE:

A. Loan Portfolio

- Each loan/security documents transferred to separate LLC
 - Membership interest provided in proportion to fractional interest
 - RB receives membership interest in amount of ML interest
 - NP funds receive membership interest
 - Operating Agreement for each new LLC to provide for appointment of governing board and election of manager

- Upon establishment of LLCs and transfer of rights, all existing agencies, servicing, Operating Agreements, and other contracts with ML are extinguished

- Each LLC free to contract with ML or other servicer

- NP funds will each be given the right to elect new manager based upon % interest

- Each LLC will be valued with any amounts of shortfall of loan to investment to be included in Unsecured Trust

- LLC to distribute funds to members pro-rata based upon membership percentage

B. Other secured claims

- Claims of RB, Artemus, SVP, and Arizona Bank will be restructure, satisfied through asset sales
 - Retain liens
 - Decelerate defaults

C. Unsecured creditors

- Create Trust to hold remaining assets
 - Unencumbered REO
 - Avoidance and third-party claims
 - Tangible assets
 - Platform
- Appoint trustee to pursue claims, sell assets and distribute proceeds
- All unsecured creditors, consisting of trade creditors, new LLC shortfall claims, borrowers, etc. share pro-rate in proceeds from Trust

D. Equity

- Equity interests will be cancelled

E. VTL

- Retain all rights to collateral
- Participate in Unsecured Trust to extent of shortfall

II. TREATMENT:

A. Administrative claims

- Pay in full
- Pay from proceeds of unencumbered assets
 - Debtor
 - Investor Committee
 - VTL Committee
 - Unsecured Creditor Committee
 - Radical Bunny

B. Priority Claims

- Taxes
- Wages
- Other priority claims

C. Secured Claims

- Stratera: retain liens- restructure-pay from proceeds at sale
AZ Bank: retain liens- restructure-pay from proceeds at sale
Artemus: retain liens- restructure-pay from proceeds at sale
SVP: retain liens- restructure-pay from proceeds at sale
- Radical Bunny:
 - Paid from proceeds of sale of secured REO
 - Exchange notes for membership interests in LLCs
 - Deemed secured

- Entitled to administrative claim for fees
- Entitled to pro-rata share of unsecured distributions to LLCs
- Avoidance actions against Radical Bunny settled as part of plan

D. Investors

- NP Funds
 - Individuals will keep interests in NP funds
 - Each fund will receive membership interest in LLC
 - Entitled to pro-rata share of unsecured distributions to LLC
- Pass-Through
 - Exchange interests for membership interests in new LLC
 - Share in pro-rata share of unsecured distributions to LLC
- Ownership of Notes/Deeds of Trust validated in Investors
- Avoidance actions against Investors settled as part of plan

EXHIBIT 2

Shelton Freeman

From: Kara Gibson [kschrader@dmylphx.com]
Sent: Tuesday, November 04, 2008 2:30 PM
To: 'REECE, CATHY'
Cc: Shelton Freeman; Heidi Cooling; Sara Vance; 'March, Nancy J.'; 'Gaines, Heather'; Jared Parker
Subject: RB/Investors Committee--Plan of Reorganization
Attachments: RB.Inv.Committee.Plan.of.Reorg.03.doc

Cathy,

Attached is a draft of the RB/Inv. Committee Plan of Reorganization. As you know, this is not in final form so please feel free to review and comment as necessary.

Sincerely,

Kara L. Gibson

Paralegal

DeConcini McDonald Yetwin & Lacy, P.C.

7310 North 16th Street, Suite 330

Phoenix, Arizona 85020

Tel: 602-282-0480

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E-mail: kgibson@dmylphx.com

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This communication is confidential and is intended only for the use of the individual or entity named above. If you have received this communication in error, please immediately destroy it and notify the sender by reply email or by telephone at 602-282-0500.

ARTICLE I
INTRODUCTION

This plan of reorganization (defined herein as the "Plan," including any modifications hereto) is proposed jointly, pursuant to the provisions of 11 U.S.C. § 1101, *et seq.*, by RADICAL BUNNY, LLC, an Arizona limited liability company ("RBLLC"), and THE OFFICIAL COMMITTEE OF INVESTORS ("Investors Committee"), which are, or represent, parties in interest in the above-entitled Chapter 11 case of MORTGAGES, LTD. ("ML" or the "Debtor"). RBLLC and the Investors Committee request confirmation of the Plan pursuant to 11 U.S.C. § 1129(a) and (b).

ARTICLE II
DEFINITIONS AND RULES OF INTERPRETATION

The terms set forth in this Article II shall have the respective meanings hereinafter set forth. Any capitalized term used but not otherwise defined herein shall have the meaning given to that term in the Bankruptcy Code (as hereinafter defined). Whenever the context requires, such terms include the plural as well as the singular, the masculine gender includes the feminine gender, and the feminine gender includes the masculine gender.

2.1. Administrative Claim means a Claim for any cost or expense of administration of the Chapter 11 Case allowed under Sections 503(b) or 507(b) of the Bankruptcy Code and entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including, without limitation: (a) fees payable under 28 U.S.C. §1930; (b) actual and necessary costs and expenses of preserving the Debtor's Estate or administering the Chapter 11 Case; (c) all compensation and expenses of Professional Persons to

the extent Allowed by Final Order under Sections 330, 331, or 503 of the Bankruptcy Code; and expenses of members appointed to a Committee to the extent Allowed by Final Order under Section 503(b)(3)(F).

2.2. Administrative Claim Bar Date means the date or dates established by the Bankruptcy Court for the filing of Administrative Claims, *except* Claims for Professional Fees.

2.3. Advisory Board means the Advisory Board created for the Liquidating Trust pursuant to Section 6.9 below.

2.4. Allowed means, with respect to any Claim against, or Interest in, the Debtor: (a) proof of which, requests for payment of which, or application for allowance of which, was filed or deemed filed on or before the Bar Date, Administrative Claim Bar Date, or the Professional Fee Bar Date, as applicable, for filing proofs of Claim or Interest or requests for payment for Claims of such type against the Debtor; or (b) a Claim or Interest that is allowed in any contract, instrument, indenture, or other agreement entered into in connection with the Plan and as to which no objection to its allowance has been interposed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court.

2.5. Arizona Bank Secured Claims means the Claims based on a bank line of credit dated December 14, 2007, by Arizona Bank & Trust as lender, to Debtor, as borrower, secured by property in Fountain Hills and Scottsdale, Arizona, respectively.

2.6. Artemis Secured Claims means the Claims based on a promissory note dated March 7, 2008 executed by the Debtor, as maker,

secured by a deed of trust on property owned by the Debtor known as Central & Highland, located in Phoenix, Arizona.

2.7. Avoidance Actions means all statutory causes of actions preserved for the Estate under Sections 510, 542, 543, 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code.

2.8. Ballot means the ballot accompanying the Plan and Disclosure Statement on which Creditors who are entitled to vote on the Plan will indicate their vote to accept or reject the Plan and make the election to opt out of the Liquidating Trust.

2.9. Bankruptcy Code means Title 11 of the United States Code, 11 U.S.C. §§101-1330, as amended from time to time and as applicable to the Chapter 11 Case.

2.10. Bankruptcy Court means the United States District Court for the District of Arizona having jurisdiction over the Chapter 11 Case and, to the extent of any reference made to 28 U.S.C. §157, the bankruptcy unit of such District Court constituted pursuant to 28 U.S.C. §151.

2.11. Bankruptcy Rules means, collectively, the Federal Rules of Bankruptcy Procedure as promulgated under 28 U.S.C. §2075 and any Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Case.

2.12. Bar Date means October 7, 2008 (November 21, 2008 for Investors, the MP Funds, and the VTL Fund) and any other applicable date or dates fixed by the Bankruptcy Court by which Persons asserting a Claim against the Debtor (*except* Administrative Claims and Claims for Professional Fees) must file a proof of claim or be forever barred from

asserting a Claim against the Debtor or its property, from voting on the Plan, and from sharing in distributions under the Plan.

2.13. Business Day means any day other than a Saturday, Sunday, or legal holiday (as defined in Bankruptcy Rule 9006) and any other day on which commercial banks in Phoenix, Arizona are authorized to close.

2.14. Cash means currency, checks drawn on a bank insured by the Federal Deposit Insurance Corporation, certified checks, money orders, negotiable instruments, and wire transfers of immediately available funds.

2.15. Channeled Claims means all those Claims and portions of Claims that are treated as General Unsecured Claims and beneficiaries of the Liquidating Trust under the Plan which have not made the Opt-Out Election on the Ballot. Holders of General Unsecured Claims will have the option either to be treated as Channeled Claims, in which case they will be entitled to recovery only from the proceeds of the Liquidating Trust, or they may pursue their Claims independently against the Debtor and others, in which case they must make the Opt-Out Election on the Ballot and will not be entitled to participate in distributions from the Liquidating Trust.

2.16. Chapter 11 Case means the case under Chapter 11 of the Bankruptcy Code in which Debtor is the Debtor and debtor-in-possession, commenced as an involuntary Chapter 7 case on June 20, 2008, converted to a Chapter 11 case on June 24, 2008, and pending before the Bankruptcy Court.

2.17. Claim means a claim against a Person or its property as defined in Section 101(5) of the Bankruptcy Code, including, without

limitation: (a) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured arising at any time before the Effective Date; or (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

2.18. Class means a category of holders of Claims or Interests which are substantially similar in nature to the Claims or Interests of other holders placed in such category, as designated in Article III of the Plan.

2.19. Committee means any one of the following: Investors Committee, Unofficial Investors Committee, VTL Committee, and the Unsecured Creditor Committee.

2.20. Confirmation Date means the date on which the Bankruptcy Court enters the Confirmation Order.

2.21. Confirmation Hearing means the hearing held by the Bankruptcy Court to consider confirmation of the Plan under Section 1129 of the Bankruptcy Code, as such hearing may be adjourned from time to time.

2.22. Confirmation Order means the order of the Bankruptcy Court confirming the Plan in accordance with the Bankruptcy Code.

2.23. Creditor means any holder of a Claim, whether or not such Claim is an Allowed Claim, encompassed within the statutory definition set forth in Section 101(10) of the Bankruptcy Code.

2.24. Debtor means Mortgages Ltd. ("ML"), as Debtor and Debtor-in-possession in the Chapter 11 Case, in accordance with Section 1107 and 1108 of the Bankruptcy Code.

2.25. Disallowed means, with respect to a particular Claim, all or any portion of a Claim that has been disallowed by a Final Order.

2.26. Disclosure Statement means the written disclosure statement relating to the Plan including, without limitation, all exhibits and schedules to such disclosure statement, in the form approved by the Bankruptcy Court under Section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017.

2.27. Disputed means, with respect to Claims or Interests, any Claim or Interest: (a) that is listed in the Schedules as unliquidated, disputed, or contingent; or (b) as to which the Debtor or any other party in interest has interposed a timely objection or request for estimation, or has sought to equitably subordinate or otherwise limit recovery in accordance with the Bankruptcy Code and the Bankruptcy Rules, or which is otherwise disputed by the Debtor in accordance with applicable law, such objection, request for estimation, action to limit recovery or dispute has not been withdrawn or determined by a Final Order; or (c) that is a contingent Claim.

2.28. Effective Date means the later of: (a) the first Business Day that is at least eleven days after the Confirmation Date and on which no stay of the Confirmation Order is in effect; and (b) the Business Day on which all of the conditions set forth in Section 5.1 of the Plan have been satisfied or waived.

2.29. Estate means the estate for the Debtor created in the Chapter 11 Case in accordance with Section 541 of the Bankruptcy Code.

2.30. Final Order means an order or judgment of the Bankruptcy Court: (a) as to which the time to appeal, petition for *certiorari*, or move for reargument or rehearing has expired; or (b) as to which no appeal, petition for *certiorari*, or other proceedings for reargument or rehearing is pending; or (c) as to which any right to appeal, petition for *certiorari*, reargue, or rehear has been waived in writing in form and substance satisfactory to the Debtor; or (d) if an appeal, writ of *certiorari*, or reargument or rehearing has been sought, as to which the highest court to which such order was appealed, or *certiorari*, reargument or rehearing has determined such appeal, writ of *certiorari*, reargument, or rehearing, or has denied such appeal, writ of *certiorari*, reargument, or rehearing, and the time to take any further appeal, petition for *certiorari*, or move for reargument or rehearing has expired; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order does not prevent such order from being a Final Order.

2.31. General Unsecured Claim means any Claim against the Debtor as of the Order For Relief Date not secured by a charge against or interest in property of the Estate, and that is not: (a) an Administrative Expense Claim; (b) a Priority Tax Claim; (c) a Priority Claim; or (d) a Claim for Professional Fees.

2.32. Interest means any ownership interest or share in the Debtor at the Order for Relief Date, whether or not transferable, preferred, voting or denominated "stock", or a similar security.

2.33. Investors Committee means the Official Committee of Investors.

2.34. Investors means all Persons holding fractional or participating interests in the ML Loans, whether as a pass-through investor or under the Revolving Opportunity Loan Program, excluding the Debtor.

2.35. Investors Damages means _____.

2.36. Lease means the existing lease for premises located at 44th Street and Camelback, Phoenix, Arizona, between the Debtor and the SMC Revocable Trust.

2.37. Liquidating Trust means the Liquidating Trust established on the Effective Date pursuant to Section VI of the Plan and the Liquidating Trust Agreement.

2.38. Liquidating Trustee means the Person to be named prior to the Confirmation Hearing to manage the Liquidating Trust pursuant to the Plan.

2.39. Liquidating Trust Agreement means the agreement to be entered into by the Liquidating Trustee and the Debtor before the Confirmation Date setting forth the terms of the Liquidating Trust which will govern the operations of the Liquidating Trust, a copy of which is attached as Exhibit “__” to the Disclosure Statement. The Liquidating Trust Agreement can be amended at any time up to three (3) Business Days before the Confirmation Hearing.

2.40. Liquidation Fund means that deposit account to be established on or before the Effective Date to hold funds received from the Non-Loan Assets and recoveries from Avoidance Actions for distribution to holders of Allowed Claims pursuant to the Plan. The costs and expenses of the Liquidating Trust, the Liquidating Trustee, and the Advisory Board shall be paid out of the Liquidation Fund.

2.41. Loan LLCs means separate limited liability companies to be organized pursuant to the Plan to hold each of the ML Loans pursuant to Article IV of the Plan. Each limited liability company will be governed in accordance with a separate operating agreement.

2.42. ML Deeds of Trust means the deeds of trust and other security documents of the Debtor, ownership of which will be transferred to separate Loan LLCs pursuant to the Plan.

2.43. ML Loan Documents means all loan documents that evidence or secure the ML Loans, including the ML Notes and ML Deeds of Trust.

2.44. ML Loans means those loans of the Debtor that will be transferred to separate Loan LLCs pursuant to the Plan and serviced by an independent servicing agent for the benefit of RBLLC and the investors in a particular ML Loan.

2.45. ML Notes means the promissory notes evidencing loans from the Debtor to third-party borrowers, ownership of which will be transferred to a separate Loan LLC pursuant to the Plan.

2.46. MP Funds means MP122009 L.L.C., an Arizona limited liability company, MP062011 L.L.C., an Arizona limited liability company, MP122030 L.L.C., an Arizona limited liability company, Mortgages Ltd. Opportunity Fund MP12, L.L.C., an Arizona limited liability company, Mortgages Ltd. Opportunity Fund MP13, L.L.C., an Arizona limited liability company, Mortgages Ltd. Opportunity Fund MP14, L.L.C., an Arizona limited liability company, Mortgages Ltd. Opportunity Fund MP15, L.L.C., an Arizona limited liability company, Mortgages Ltd. Opportunity Fund

MP16, L.L.C., an Arizona limited liability company, and Mortgages Ltd. Opportunity Fund MP17, L.L.C., an Arizona limited liability company.

2.47. MP Funds Operating Agreements means all operating agreements and related contracts between Debtor and MP Funds.

2.48. Non-Loan Assets means and includes all assets that are not used to make those payments that are due on the Effective Date of the Plan, and that are not transferred to one of the Loan LLCs on the Effective Date of the Plan. Non-Loan Assets shall specifically include all of the Debtor's interest in real property; avoidance and third-party claims; tangible assets, including, without limitation, computers, intellectual property, furniture, fixtures and equipment; and employee and related business contracts and customer lists, excluding existing servicing rights or agency agreements related to the ML Loans, all of which will be extinguished as of the Effective Date of the Plan.

2.49. Opt-Out Election means the election made by each holder of a General Unsecured Claim (including RBLLC and Investors with claims for Investors Damages, to the extent of their Unsecured Claims) on the Ballot not to participate in the Liquidating Trust.

2.50. Order for Relief Date means June 24, 2008, the date on which the Chapter 11 Case was converted to a Chapter 11 case and the Order for Relief was entered.

2.51. Ordinary Course Professionals means _____

2.52. Person means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated association or organization, governmental agency, or associated political subdivision.

2.53. Plan means the Plan of Reorganization, either in its present form or as it may be amended, supplemented or modified from time to time, including all its annexed exhibits and schedules.

2.54. Plan Proponents means RBLLC and the Investors Committee.

2.55. Priority Non-Tax Claim means any Claim (or portions of such Claim) entitled to priority under Section 507(a) of the Bankruptcy Code other than Priority Tax Claims, Administrative Expense Claims, and Claims for Professional Fees.

2.56. Priority Tax Claim means any Claim of a governmental unit entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

2.57. Pro Rata means a proportionate share, such that the ratio of the consideration distributed on account of an Allowed Claim or Interest in a Class to the amount of such Allowed Claim or Interest is the same as the ratio of the amount of the consideration distributed on account of all Allowed Claims or Interests in such Class to the amount of all Allowed Claims or Interests in such Class.

2.58. Professional Fee Bar Date means the date or dates established by the Bankruptcy Court for the filing of Claims for Professional Fees.

2.59. Professional Fees means the Administrative Claims for compensation and reimbursement of expenses submitted in accordance with Sections 330, 331, or 503(b) of the Bankruptcy Code of Debtor's Professional Persons not otherwise satisfied in accordance with other provisions of the Plan.

2.60. Professional Persons means any professional employed in the Chapter 11 Case pursuant to Section 327 or Section 1103 of the Bankruptcy Code, or any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to Sections 503(b)(3)(F) and (b)(4) of the Bankruptcy Code. Professional persons shall specifically include, but not be limited to, professionals employed by: (a) the Debtor, including Ordinary Course Professionals; (b) the Investors Committee; (c) the Unofficial Investors Committee; (d) the VTL Committee; (e) the Unsecured Creditor Committee; and (f) RBLLC.

2.61. RBLLC Collateral means (1) all of the Debtor's right, title and interest in the ML Loans and the ML Loan Documents; and (2) the RBLLC Non-Loan Collateral.

2.62. RBLLC Non-Loan Collateral means all of the Debtor's right, title and interest in (whether complete or partial) in real property known as Central & Highland, Chateaux on Central, a 40-acre Troon parcel, Mummy Mountain 8, and a 21-acre Fountain Hills parcel and a note payable from Scott Coles.

2.63. RBLLC Notes means 99 promissory notes with an aggregate principal amount of \$197,232,785.05 executed by the Debtor in favor of RBLLC.

2.64. RBLLC Secured Claims means the Claims of RBLLC evidenced by the RBLLC Notes and secured by the RBLLC Collateral.

2.65. Schedules means the respective schedules of assets and liabilities, the lists of holders of interests, and the statements of financial affairs filed by the Debtor under Section 521 of the Bankruptcy Code and

Bankruptcy Rule 1007, as such schedules, lists, and statements may have been or may be supplemented or amended from time to time.

2.66. Secured Claim means any Claim, to the extent reflected in the Schedules or a proof of claim as a Secured Claim, which is secured by a lien on collateral to the extent of the value of such Collateral, as determined in accordance with Section 506(a) of the Bankruptcy Code, or, if such Claim is subject to setoff under Section 553 of the Bankruptcy Code, to the extent of such setoff.

2.67. Secured Tax Claim means any Claim of any state or local governmental unit or associated political subdivision that is secured by a lien on property of the Estate by operation of applicable law including, without limitation, every Claim for unpaid real, personal property, or *ad valorem* taxes.

2.68. Stratera Secured Claims means any Claim evidenced by debtor-in-possession loans made to the Debtor and secured by collateral as authorized by the Bankruptcy Court.

2.69. Unsecured Claim means every Claim or portion thereof, regardless of the priority of such Claim, that is not a Secured Claim.

2.70. Unofficial Investors Committee means the unofficial committee for Investors existing prior to the appointment of the Investors Committee and VTL Committee.

2.71. Unsecured Creditors Committee means the Official Committee of Unsecured Creditors appointed by the United States trustee pursuant to Section 1102(a)(1).

2.72. VTL Committee means the Ad Hoc Committee of Investors in the Value-To-Loan Opportunity Fund I L.L.C., an Arizona limited liability company.

ARTICLE III

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

3.1 No Classification of Administrative Claims and Priority Tax Claims. As provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims shall not be classified for purposes of voting on, or receiving distributions under, the Plan. All such Claims shall be treated separately as unclassified Claims on the terms set forth herein.

3.2 Treatment of Administrative Claims. Allowed Administrative Claims will be paid, in full satisfaction of such Claim: (a) a single Cash payment in the Allowed amount of the Claim on the Effective Date from the Debtor's unencumbered funds; (b) in the ordinary course of business as said Claim matures; or (c) upon such other less favorable terms as may be agreed upon in writing by the holder of such Claim and the Debtor, or as ordered by the Bankruptcy Court. To the extent not otherwise paid on or before the Effective Date, Allowed Administrative Claims may be paid from the Liquidation Fund.

3.3 Deadline for Filing Claims for Administrative Expenses. With the exception of applications for compensation and reimbursement filed by Professional Persons, which applications shall be filed no later than twenty (20) days after the Effective Date, all requests for payment of Administrative Claims shall be filed by the *earlier* of: (i) thirty (30) days after the date of service of notice of the Effective Date, or (ii) any

applicable Bar Date established by the Bankruptcy Court and noticed separately by the Debtor. If Administrative Claims are not timely filed in accordance with the Plan, they will be forever barred and will not be assertable in any manner against the Debtor or the Estate; *provided, however,* that no such request for payment shall be required with respect to Administrative Claims that have been paid previously or with respect to Administrative Claims for expenses incurred in the ordinary course of business, unless a dispute exists as to any such expenses, or unless the provisions of the Bankruptcy Code require approval or allowance by the Bankruptcy Court as a precondition to payments being made on any such expense.

3.4 Treatment of Priority Tax Claims. Each holder of an Allowed Priority Tax Claim will be paid, consistent with § 1129(a)(9)(C) of the Bankruptcy Code and in full satisfaction of such holder's Priority Tax Claim: (i) the amount of such holder's Priority Tax Claim, with simple interest at the rate of six percent (6%) per annum (or such other rate as the Bankruptcy Court may determine at the Confirmation Hearing is appropriate), in deferred Cash payments over a period of five (5) years from the Order for Relief Date, to be paid in equal quarterly installments of principal and interest from the Liquidation Fund, provided that: (a) the Debtor may prepay the balance of any such Priority Tax Claim at any time without penalty; and (b) the treatment of Priority Tax Claims shall not be less favorable than the most favored nonpriority unsecured claim provided for by the Plan; or (ii) such other treatment as may be agreed upon in writing by such holder and the Debtor, as appropriate or ordered by the Bankruptcy Court.

3.5 Elimination of Claim. To the extent there are no amounts owing on the Effective Date for any Priority Non-Tax Claims and/or any Priority Tax Claims, such treatment as set forth above will be deemed automatically eliminated from the Plan.

3.6 Classification and Treatment of Claims and Interests That Are Classified. For purposes of voting, distributions, and all confirmation matters, except as otherwise provided herein, all Allowed Claims and Interests shall be classified and treated as follows:

(a) *Class 1: Priority Non-Tax Claims.* Each holder of a Priority Non-Tax Claim that is an Allowed Claim shall be paid by the Liquidating Trust in full on the Effective Date of the Plan out of the Liquidation Fund. Class 1 is unimpaired under the Plan and, therefore, holders of Allowed Priority Non-Tax Claims shall not be entitled to vote on the Plan and, instead, shall be deemed to have accepted the Plan.

(b) *Class 2: Secured Tax Claims.* **[DOES THIS CLASS EXIST?]** Each holder of an Allowed Secured Tax Claim will be paid in full in Cash from the Liquidation Fund on the latest of: (a) the Effective Date, or as soon thereafter as practicable; (b) such date as may be fixed by the Bankruptcy Court; (c) the tenth Business Day after such Claim is Allowed; (d) the date on which such Secured Tax Claim is scheduled to be paid in the ordinary course of business under applicable law or regulation; and (e) such date as the holder of such Claim and Debtor agree. Class 2 is unimpaired by the Plan; consequently, all holders of Allowed Claims in Class 2 are deemed to have accepted the Plan and are not entitled to vote on the Plan.

(c) *Class 3: Stratera Secured Claims.* The holder of the Class 3 Stratera Secured Claims will retain its liens against its collateral. [Terms of Restructure]. The recapitalized Stratera Secured Claims will be paid pursuant to the terms of the Plan from the proceeds of the sale of its collateral as such collateral is sold by the Liquidating Trustee. Accordingly, the Class 3 Stratera Secured Claims are impaired pursuant to the Plan.

(d) *Class 4: Artemis Secured Claims.* The holder of the Class 4 Artemis Secured Claims will retain its liens against its collateral. [Terms of Restructure]. The Class 4 Artemis Secured Claims shall not be entitled to any default interest, late fees or other charges because of a default that occurred prior to the Effective Date. The recapitalized Artemis Secured Claims will be paid pursuant to the terms of the Plan from the proceeds of the sale of its collateral as such collateral is sold by the Liquidating Trustee. Accordingly, the Class 4 Artemis Secured Claims are impaired pursuant to the Plan.

(e) *Class 5: Arizona Bank Secured Claims.* The holder of the Class 5 Arizona Bank Secured Claims will retain its liens against its collateral. [Terms of Restructure]. The Class 5 Arizona Bank Secured Claims shall not be entitled to any default interest, late fees or other charges because of a default that occurred prior to the Effective Date. The recapitalized Arizona Bank Secured Claims will be paid pursuant to the terms of the Plan from the proceeds of the sale of its collateral as such collateral is sold by the Liquidating

Trustee. Accordingly, the Class 5 Arizona Bank Secured Claims are impaired pursuant to the Plan.

(f) *Class 6: SVP Secured Claims.* [HAVE THESE LOANS BEEN PAID?] The holder of the Class 6 SVP Secured Claims will retain its liens against its collateral. [Terms of Restructure]. The Class 6 SVP Secured Claims shall not be entitled to any default interest, late fees or other charges because of a default that occurred prior to the Effective Date. The recapitalized SVP Secured Claims will be paid pursuant to the terms of the Plan from the proceeds of the sale of its collateral as such collateral is sold by the Liquidating Trustee. Accordingly, the Class 6 SVP Secured Claims are impaired pursuant to the Plan.

(g) *Class 7: RBLLC Secured Claims.* RBLLC will be deemed to be a secured creditor with valid and perfected security interests and liens in the RBLLC Collateral. As of the Effective Date, the RBLLC Notes will be exchanged dollar for dollar for a *pro rata* membership interest in each of the Loan LLCs proportional to the fractional interest of the Debtor in each of the ML Loans. RBLLC will be deemed to have existing liens in the RBLLC Non-Loan Collateral subject to other Secured Claims, and will be paid from the proceeds of the sale of the RBLLC Non-Loan Collateral by the Liquidating Trustee. Any potential Avoidance Actions held by the Estate against RBLLC or any of its members or participants shall be deemed settled and resolved upon confirmation of the Plan. RBLLC will also have a Class 11 General Unsecured Claim, and will be a beneficiary of the Liquidating Trust to the extent that the unpaid obligations

under the RBLLC Notes are not (a) exchanged for a membership interest in a Loan LLC; or (b) repaid from the sale of the RBLLC Non-Loan Collateral. The Class 7 RBLLC Secured Claims are impaired pursuant to the Plan.

(h) *Class 8: MP Funds Investors' Claims.* The holders of the MP Funds Investors' Claims will receive new interests under the Plan as follows:

On the Effective Date, each of the MP Funds will relinquish its fractional interests in each of the ML Loans and exchange those interests for membership interests in the applicable Loan LLC that holds the applicable ML Loan. The new membership interests shall be proportional to the fractional interest of the MP Funds in each of the ML Loans.

Upon the distribution of membership interests in the Loan LLCs to the MP Funds Investors in a particular MP Fund, that MP Fund will be dissolved.

MP Funds Investors will also have a Class 11 General Unsecured Claim, and will be beneficiaries of the Liquidating Trust to the extent of their Investors Damages.

Any potential Avoidance Actions held by the Estate against MP Funds or any of its members or investors shall be deemed settled and resolved upon confirmation of the Plan.

The Class 8 MP Funds Investor Claims are impaired under the Plan.

(i) *Class 9: VTL Claims.* The holders of the VTL Claims will be resolved by the VTL Committee and the Investors Committee.

At the election of the members of Class 9, the VTL Fund may stay in place, in which case the VTL Committee would be permitted to elect a new manager of the VTL Fund. Any potential Avoidance Actions held by the Estate against the VTL Fund or any of its members or investors shall be deemed settled and resolved upon confirmation of the Plan.

The Class 9 VTL Claims are impaired under the Plan.

Class 10: Pass-Through Claims. On the Effective Date, holders of Class 10 Pass-Through Claims will relinquish their respective fractional interests in each of the ML Loans and exchange those interests for membership interests in the applicable Loan LLC that holds the applicable ML Loan. The new membership interests in the applicable Loan LLC shall be proportional to the fractional interest in the related ML Loan. Holder of Class 10 Pass-Through Claims will also have a Class 11 General Unsecured Claim, and will be beneficiaries of the Liquidating Trust to the extent of their Investors Damages. The Class 10 Pass-Through Claims are impaired under the Plan.

(j) *Class 11: General Unsecured Claims.* Holders of Class 11 General Unsecured Claims will be beneficiaries of the Liquidating Trust to be established on the Effective Date of the Plan in accordance with the Plan. Claims and portions thereof that are treated in Class 11 and are beneficiaries of the Liquidating Trust become Channeled Claims unless they choose the Opt-Out Provision under the Plan. The Class 11 General Unsecured Claims are impaired under the Plan.

(k) *Class 12: Equity Interests.* As of the Effective Date, all Equity Interests in the Debtor will be canceled and extinguished, and holders of Equity Interests will receive nothing under the Plan and are deemed to have rejected the Plan.

3.7 Classification Rules. All Claims and Interests are classified under the Plan as stated in this Article III; provided, however, that a Claim or Interest will be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and otherwise will be deemed classified and treated in (or treated in a manner that is non-discriminatory as to) a different Class to the extent that a part of such Claim or Interest qualifies within the description of such different Class. All Claims against the Debtor of whatever nature, whether or not scheduled and whether or not liquidated, unliquidated, absolute or contingent, including all Claims arising from the rejection of Executory Contracts, and all Interests, whether or not resulting in an Allowed Claim or Allowed Interest, shall be bound by the provisions of the Plan and are hereby classified under the Plan as stated in the Plan. As of the Confirmation Hearing, any Class of Claims which does not contain any Claims will be deemed deleted automatically from the Plan; and any Class of Claims which does not contain an Allowed Claim (or a Claim temporarily or provisionally allowed by the Bankruptcy Court for voting purposes) will be deemed deleted automatically from the Plan with respect to the voting on confirmation of the Plan.

ARTICLE IV

MEANS FOR IMPLEMENTATION OF PLAN

4.1 Creation of Loan LLCs. A separate Loan LLC will be formed to hold each of the ML Loans and the ML Loan Documents associated with that ML Loan, including the ML Note and ML Deed of Trust. 100% ownership of each ML Note and ML Deed of Trust will be transferred to the respective Loan LLC as of the Effective Date of the Plan. Upon such transfer, each Loan LLC shall own such ML Loan Documents free and clear of all claims of any Persons except for any set-off claims of the borrower under such ML Loan.

4.2 Membership Interest in Loan LLCs. Membership interests in each applicable Loan LLC will be provided to RBLLC and Investors, including the Investors in the MP Funds, in proportion to their respective fractional interests in a particular ML Loan and related ML Loan Documents, including the ML Deed of Trust. The Investors in the MP Funds will receive direct interests in the applicable Loan LLC in proportion to their interests in the MP Funds and in proportion to the MP Funds' respective fractional interests in a particular ML Loan and related ML Loan Documents, including the ML Deed of Trust.

4.3 Dissolution of MP Funds. After the Investors in the MP Funds receive their membership interests in the applicable Loan LLCs, the MP Funds will be dissolved.

4.4 Governance of Loan LLCs. Each Loan LLC will operate pursuant to a separate operating agreement in the form of **Exhibit __** hereto, which will provide for appointment of a governing board of members and the election of a manager, and for certain actions to be

approved by a majority vote. It is anticipated that each LLC will enter into a separate servicing contract for the servicing of its ML Loan.

4.5 Rejection of Executory Contracts and Lease. Upon the establishment of the Loan LLCs and the transfer of ML Loans to those Loan LLCs, all existing agencies, servicing, MP Funds Operating Agreements, and related contracts with ML will be rejected, and all rights and obligations associated with such contracts will be extinguished. Upon the transfer of ML Loans to those Loan LLCs, the Lease shall be deemed rejected.

4.6 Distributions from Loan LLCs. Each Loan LLC will distribute funds to its members pro rata based upon their respective membership percentages in such Loan LLC as set forth in the operating agreement for each of the Loan LLCs.

4.7 Creation of Liquidating Trust. The Debtor's interest in the Non-Loan Assets will be transferred to the Liquidating Trust as of the Effective Date. The Liquidating Trust is more fully described in Article VI of the Plan.

4.8 Distributions to General Unsecured Creditors. Distributions to General Unsecured Creditors, including Secured Creditors to the extent of their deficiency claims and Investors to the extent of their Investors Damages, and other holders of Unsecured Claims will be made by the Liquidating Trust out of the Liquidation Fund in accordance with the terms of the Plan and the Liquidating Trust Agreement.

4.9 Add Channeling Injunction provision here – provide that consideration for channeling injunction is Debtor's giving up any right to the ML Loans?

4.10 Post-Confirmation Officers and Directors. The senior executive officers and directors of the Debtor that have served prior to the Effective Date shall not continue to serve from and after the Effective Date.

4.11 Discharge of Debtor. Except as specifically provided otherwise in the Confirmation Order or in the Plan, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan shall be in exchange for and in complete satisfaction, discharge and release of all Claims and termination of all Claims and Interests, including all principal and any interest accrued on Claims from the Order for Relief Date. Confirmation of the Plan shall (a) discharge the Debtor from all claims or other debts, liabilities or obligations of every kind and nature that arose in whole or in part before the Effective Date, and all debts of the kind specified in Bankruptcy Code § 502(g), (h) or (i), whether or not a proof of claim based on such debt is filed or deemed filed pursuant to Bankruptcy Code § 501, a claim based on such debt is allowed pursuant to Bankruptcy Code § 502 of the Bankruptcy Code, or the holder of a claim based on such debt has accepted the Plan; and (b) terminate all Interests and other rights of holders of Interests.

4.12 Preservation of Debtor's Claims, Demands And Causes Of Action. All claims, demand and causes of action held by, through or on behalf of the Debtor and/or the Estate are hereby preserved in full unless otherwise provided by the Plan; and no provision of the Plan shall impair the rights of the Liquidating Trustee with respect to any such claims, demands and causes of action, to prosecute or defend against any such preserved claims, demands and causes of action.

4.13 Compliance With Tax Requirements. In connection with the Plan, the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by federal, state, local and foreign taxing authorities and all distributions hereunder shall be subject to such withholding and reporting requirements.

ARTICLE V

CONDITIONS TO EFFECTIVENESS OF PLAN

5.1 Conditions to Confirmation. The following are conditions precedent to confirmation of the Plan:

- (a) The Confirmation Date has occurred;
- (b) The Confirmation Order is a Final Order, *except that* the Debtor reserves the right to cause the Effective Date to occur notwithstanding the pendency of an appeal of the Confirmation Order, under circumstances that would moot such appeal;
- (c) No request for revocation of the Confirmation Order under Section 1144 of the Bankruptcy Code has been made, or, if made, remains pending;
- (d) The Debtor retains sufficient Cash on the Effective Date to make required distributions to holders of Allowed Claims on the Distribution Date.

5.2 Waiver of Conditions. The conditions to Confirmation and the Effective Date may be waived in whole or in part by the Debtor at any time without notice, an order of the Bankruptcy Court, or any further action other than proceeding to Confirmation and consummation of the Plan.

ARTICLE VI

LIQUIDATING TRUST AND TRUSTEE

6.1 Appointment of Liquidating Trustee. On the Effective Date, the Liquidating Trustee shall be immediately appointed and authorized to administer the Liquidating Trust and to liquidate any and all Non-Loan Assets on behalf of the Liquidating Trust for distribution in accordance with the Plan and the Liquidating Trust Agreement.

6.2 Establishment of Liquidating Trust. Pursuant to Bankruptcy Code sections 1123(a)(5)(B), 1123(b)(3)(B) and 1141 of the Bankruptcy Code, the Confirmation Order shall approve the Liquidating Trust Agreement, the establishment of the Liquidating Trust and appointment of the Liquidating Trustee and authorize and direct the Debtor to take all actions necessary to consummate the terms of the Liquidating Trust Agreement and to establish the Liquidating Trust, including the transfer of the Non-Loan Assets to the Liquidating Trust. The Liquidating Trust shall be deemed established, and the Liquidating Trustee shall be deemed appointed, as of the Effective Date. The Liquidating Trust shall be created and administered solely to implement the Plan. From the Effective Date, the Liquidating Trustee shall be a representative of the Estate, pursuant to Bankruptcy Code Section 1123, appointed for the purposes of, among other things, pursuing the Avoidance Actions on behalf of the Debtor's Estate. In furtherance of that objective, the Liquidating Trustee shall have the rights of a trustee appointed under Bankruptcy Code Section 1106 as it relates to the Non-Loan Assets. The Liquidating Trust shall have the full power and authority, either in its name or the Debtor's name, to commence, prosecute, settle and abandon any action related to

the Avoidance Actions and/or object to Claims. The Liquidating Trust shall be authorized to retain professionals (which may include Professional Persons), with reasonable professional fees, expenses and costs to be paid out of the assets of the Liquidating Trust.

6.3 Tax Effect of Transfer. The transfer of the Non-Loan Assets to the Liquidating Trust shall be treated for federal income tax purposes and any applicable state or local income franchise or gross receipts tax purposes, and for all purposes of the Internal Revenue Code of 1986, as amended, as a transfer to creditors to the extent creditors are beneficiaries of the Liquidating Trust, followed by a deemed transfer from the creditors to the Liquidating Trust. The beneficiaries of the Liquidating Trust shall be treated as the grantors and deemed owners of the Liquidating Trust for federal income tax purposes and any applicable state or local income, franchise or gross receipt tax purposes, and it is intended that the Liquidating Trust be classified as a liquidating trust under Section 301-7701-4 of the Treasury Regulations, as more particularly described in Revenue Procedure 94-34, 1994-2 C.B. 684. The Liquidating Trustee and the beneficiaries of the Liquidating Trust shall value the assets of the Liquidating Trust on a consistent basis and use such valuation for all federal and state tax purposes.

6.4 Funding of Trust. The net proceeds of any and all sales (private or public) of the Non-Loan Assets collected by the Liquidating Trust (or its designee or agent), after payment of the Secured Claims from such sale proceeds, shall be placed by the Liquidating Trustee in the Liquidation Fund for payment of the Unsecured Claims as provided by the Plan. The recoveries from the Avoidance Actions shall be placed by the

Liquidating Trustee in the Liquidation Fund for payment of the Unsecured Claims as provided by the Plan.

6.5 Power of Trustee. All transfers of the Non-Loan Assets, including the execution of all contracts of sale, deeds, and other documents necessary to effectuate the Plan and to make payments under the Plan, shall be made by the Liquidating Trustee, on behalf of the Liquidating Trust and in accordance with the Liquidating Trust Agreement. The Liquidating Trustee shall have and is hereby granted the power and authority to list and/or market the Non-Loan Assets for sale (at such prices and for such amounts as determined by the Liquidating Trustee), and the Liquidating Trustee shall also have the power and authority to execute any and all documents (including contracts, deeds, and other documents) necessary to effectuate the Plan, sell or convey title to the Non-Loan Assets, without the need of further order of the Bankruptcy Court, prosecute, settle or abandon Avoidance Actions, and object to Claims. In the discharge of its duties, the Liquidating Trustee will also regularly consult with the Advisory Board and be subject to the approval rights set forth herein.

6.6 Authority of Liquidating Trustee. On and after the Effective Date, the Liquidating Trustee, by and through the Liquidating Trustee, shall be fully empowered and authorized (without further order of the Bankruptcy Court), to market for sale and/or to sell and/or dispose of the Non-Loan Assets, and shall have the power and authority (without the need for a further hearing or order of the Bankruptcy Court) to execute all contracts of sale and other documents necessary to effectuate the sale or disposition of the Non-Loan Assets. The Liquidating Trustee, on behalf of the

Liquidating Trust, shall be further empowered to (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan including, without limitation, releases, settlement documents, notices of dismissal, stipulations of dismissal of any and all Avoidance Actions; (ii) subject to the provisions of this section of the Plan, make all distributions contemplated hereby; (iii) employ professionals to represent the Liquidating Trust in connection with the consummation of the terms of the Plan; and (iv) commence such actions and exercise such other powers as may be vested in the Liquidating Trustee and/or the Liquidating Trust by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Liquidating Trustee to be necessary and proper to implement the provisions of the Plan.

6.7 Transfer of Non-Loan Assets. Immediately upon the Effective Date, the Liquidating Trustee shall receive an assignment of all of the Debtor's rights, title and interest in the Non-Loan Assets, free and clear of all Claims, liens, encumbrances and other interests, except the Secured Claims specifically provided in the Plan. The Liquidating Trust shall be granted and shall have exclusive control and possession of the Non-Loan Assets, and the Debtor (and its directors, officers, employees, shareholders and agents) shall, on the Effective Date, or immediately thereafter as is practical (without further hearing or Order of the Bankruptcy Court) peaceably turn over exclusive possession of the Non-Loan Assets to the Liquidating Trust, including all books and records related to the Non-Loan Assets and claims. The Liquidating Trust shall obtain such possession on the Effective Date for the sole purpose of effectuating and/or consummating the Plan. The Liquidating Trust shall be

established for the sole purpose of liquidating the Non-Loan Assets, including prosecuting, settling or abandoning the Avoidance Actions, and making disbursements from the Liquidation Fund for payment of Allowed Claims in accordance with the terms of the Plan.

6.8 Duration of Trust. The Liquidating Trust shall not have a term greater than ____ years from its date of creation, unless extended from time to time pursuant to the terms of the Liquidating Trust Agreement, with the approval of the Bankruptcy Court, solely to implement the Plan. At least twice a year, but only if permitted by the other terms of the Plan and the Liquidating Trust Agreement, the Liquidating Trustee shall distribute the net income of the Liquidating Trust plus all net proceeds and recoveries from the Non-Loan Assets to the Creditors holding Allowed Claims in accordance with the terms of the Plan, provided, however, that the Liquidating Trustee may retain a sufficient amount of net income and net proceeds in the Liquidating Trust that the Liquidating Trustee reasonably believes are necessary to maintain the value of the Non-Loan Assets, to pay the costs and expenses of the Liquidating Trust, including compensation to the Liquidating Trustee and his or her professionals, and the costs and expenses of the Advisory Board and its professionals.

6.9 Advisory Board. On the Effective Date, the Advisory Board will be established and will be comprised of one representative of each of the Committees, plus two (2) representatives of RBLLC. In the event of any vacancy on the Advisory board, the remaining members shall fill the vacancy with a Person who is a beneficiary under the Liquidating trust. All discretionary actions to be taken by the Liquidating Trustee with respect to the assets of the Liquidating Trust, including distributions to creditors, the

sale or abandonment of the Non-Loan Assets, the prosecution, compromise, settlement, or abandonment of any Estate Claim, or the prosecution, compromise, settlement, or abandonment of any objection to Claim shall be done in consultation with the Advisory Board.

6.10 Retention of Advisory Board Professionals. The Advisory Board may retain and compensate professionals (which may include Professional Persons) to assist the Advisory Board in performing its duties and obligations under the Plan and the Liquidating Trust Agreement, on such terms as the Advisory Board deems appropriate, without Bankruptcy Court approval. Members of the Advisory Board shall be entitled to the reimbursement of reasonable expenses incurred in performing their duties under the Plan from the Liquidating trust.

6.11 Expenses Incurred on or After the Effective Date. The amount of any reasonable fees and expenses incurred by the Liquidating Trust or the Advisory Board on or after the Effective Date (including, without limitation, reasonable attorney and other professional fees and expenses) shall be paid from funds held in the Liquidating Trust. The Liquidating Trustee shall receive compensation as set forth in the Liquidating Trust Agreement for services rendered and expenses incurred on behalf of the Liquidating Trust and in carrying out his or her duties pursuant to the Plan.

6.12 No Liability of the Advisory Board and its Members. To the maximum extent permitted by law, the Advisory Board and its members, representatives, or professionals employed or retained by the Advisory Board shall not have or incur liability to any Person for an act taken or omission made in good faith in connection with or related to any

action taken or omitted by it pursuant to the discretion, power and authority conferred to it by the Plan, the Confirmation Order or the Liquidating Trust Agreement.

ARTICLE VII

DISTRIBUTIONS AND CLAIMS OBJECTIONS

7.1 General Payment Procedures. Classes will receive distributions under the Plan in accordance with the priorities of their respective Claims and Classes stated in the Plan. Except as otherwise provided in the Plan, no Class will receive any distribution under the Plan unless there are funds remaining after application of the funds to, and full payment of, all other Claims entitled to prior distribution under the Plan. If the Allowed Claims in any Class exceed the funds available for distribution to that Class, then each Allowed Claim in that Class will be paid or satisfied Pro Rata.

7.2 Limitation on *De Minimis* Payments. No distributions will be made of less than \$50 to any claimant, unless it is the final distribution to such claimant. If a distribution is not made due to the provisions of this paragraph, then the Claim (so long as it is an Allowed Claim) will remain eligible for distributions if any subsequent distribution is made, subject to the provisions of this paragraph.

7.3 Disputed Claims and Claims Objections.

(a) *Objections.* An objection to the allowance of a Claim or Interest not otherwise approved in the Plan shall be in writing and shall be filed with the Bankruptcy Court by the Debtor or by any other party in interest at any time on or before the later of (i) sixty (60) days after the Effective Date, or (ii) such other time period as

may be fixed by the Bankruptcy Court. Any such objection must be served upon the holder of the Claim or Interest to which an objection is filed. Any objection that is not timely filed in accordance with this paragraph shall be barred. The Debtor shall have the right, power and authority to investigate and, if necessary, object to Claims and Interests within the time deadline. The _____ will prosecute, settle, compromise, or otherwise resolve objections to Claims or Interests filed prior to the Confirmation Date that have not been resolved prior to the appointment of the Liquidating Trustee.

(b) *Settlement of Claims.* Settlement by the Debtor of any objection to any Claim shall be permitted on the eleventh (11th) day after notice of the settlement has been filed with the Court and provided by the Debtor to the objector, the claimant, and all persons specifically requesting such notice following confirmation of the Plan. If on or before the objection deadline no written objection to the proposed settlement is filed with the Court, such settlement shall be deemed approved without further order of the Court. After the Effective Date, only the Liquidating Trustee shall have authority to settle Claims on behalf of the Estate. If a written objection to the proposed settlement is filed before the objection deadline, the settlement must be approved by the Court upon motion to the Court for approval of the settlement and following notice to the objecting party. Any objection to a proposed settlement that is filed after the objection deadline shall be barred and shall not be considered.

(c) *Disputed Payments.* If any dispute arises as to the identity of a holder of an Allowed Claim or an Allowed Interest who is to

receive any distribution, the Debtor may, in lieu of making such distribution to such person, make such distribution into an escrow account until the disposition thereof shall be determined by the Bankruptcy Court or by written agreement among the interested parties to such dispute.

7.4 Amendment of Claims. A Claim may be amended prior to the Effective Date only as agreed upon by the Debtor and the holder of such Claim or as otherwise permitted by the Bankruptcy Court and Bankruptcy Rules. After the Effective Date, a Claim may be amended to decrease, but not to increase, the amount thereof.

7.5 Full and Final Satisfaction. All payments and distributions under the Plan shall be in full and final satisfaction, settlement, release and discharge of all Claims and Interests.

ARTICLE VIII

TREATMENT OF EXECUTORY CONTRACTS

On the Confirmation Date (but subject to the occurrence of the Effective Date), the Debtor shall be deemed to have assumed, in accordance with §§365 and 1123 of the Bankruptcy Code, any and all Executory Contracts to which either of the Debtor is a party, except those which: (a) prior to the Confirmation Date shall have been rejected; or (b) at the Confirmation Date are the subject of pending motions to reject or are included on a list of rejected contracts and leases to be delivered to the Bankruptcy Court at or before the hearing on the confirmation of the Plan.

All proofs of claim with respect to Claims arising from the rejection under the Plan of Executory Contracts, if any, must be filed with the

Bankruptcy Court within thirty (30) days after the date of entry of an order authorizing such rejection or the Effective Date. Any such Claims that are not filed within such time shall be forever barred. Unless otherwise provided by the Bankruptcy Court, all claims arising from the rejection of Executory Contracts shall be resolved by the Bankruptcy Court.

ARTICLE IX

RETENTION OF JURISDICTION

9.1 Jurisdiction of Bankruptcy Cases. After the Effective Date, the Bankruptcy Court shall retain jurisdiction of the Chapter 11 Case pursuant to and for the purposes of §§105(a) and 1127 of the Bankruptcy Code and for the following purposes, among others:

- (a) To consider any modification of the Plan under § 1127 of the Bankruptcy Code;
- (b) To determine any and all objections to the allowance of Claims and/or Interests;
- (c) To determine any and all fee requests of professionals made pursuant to §§ 330 and 503(b) of the Bankruptcy Code;
- (d) To determine any and all applications pending on the Confirmation Date for the rejection and disaffirmance or assumption or assignment of Executory Contracts, and the allowance of Claims resulting therefrom;
- (e) To determine all controversies and disputes arising under, or in connection with, the Plan and all agreements or releases referred to in the Plan, and any disputes regarding the administration of the Estate by the Liquidating Trustee;

(f) To determine any and all applications, contested matters or adversary proceedings pending on the Confirmation Date or filed thereafter seeking to adjudicate the relative interests and priorities in and to property of the Debtor's Estate or otherwise;

(g) To effectuate payments under, and performance of, the provisions of the Plan;

(h) To determine such other matters and for such other purposes as may be provided for in the Confirmation Order; and

(i) To enter an appropriate final decree in the Chapter 11 Case.

9.2 Appeals. In the event of an appeal of the Confirmation Order or any other kind of review or challenge to the Confirmation Order, and provided that no stay of the effectiveness of the Confirmation Order has been entered, the Bankruptcy Court will retain jurisdiction to implement and enforce the Confirmation Order and the Plan according to their terms, including, but not limited to, jurisdiction to enter such orders regarding the Plan or the performance thereof to implement the Plan.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Discharge and Exculpation. The Plan provides that, except as may be specifically provided otherwise in the Confirmation Order or in the Plan, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan shall be in exchange for and in complete satisfaction, discharge and release of all Claims and termination of all Claims and Interests, including all principal and any interest accrued on Claims from the Order for Relief Date.

Confirmation of the Plan shall (a) discharge the Debtor from all claims or other debts, liabilities or obligations of every kind and nature that arose in whole or in part before the Effective Date, and all debts of the kind specified in Bankruptcy Code § 502(g), (h) or (i), whether or not a proof of Claim based on such debt is filed or deemed filed pursuant to Bankruptcy Code § 501, a Claim based on such debt is allowed pursuant to Bankruptcy Code § 502 of the Bankruptcy Code, or the holder of a Claim based on such debt has accepted the Plan; and (b) terminate all Interests and other rights of holders of Interests. The Confirmation Order shall permanently enjoin all persons from taking any actions against the Debtor to enforce or collect any Claim or Interest unless provided for in the Plan.

In addition, pursuant to the Plan, the Debtor and any of its respective officers, directors, employees, counsel, accountants, consultants, other approved professionals, or agents shall not have or incur any liability, except for liability based upon willful misconduct, to a holder of a Claim or Interest for any act or omission in connection with, or arising out of, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan, the administration of the Estate, or the distribution of property under the Plan, and in all respects shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

10.2 Modification And Amendment of Exhibits, Schedules And Appendices. The Plan Proponents may modify or amend the terms of any document or agreement that is an exhibit, schedule or appendix to the Plan without the need for re-solicitation of votes with respect to the Plan; *provided, however,* that such modification or amendment does not

materially adversely affect the rights of any Person provided in the Plan and, *provided further, however*, that prior notice of such modification or amendment shall be served in accordance with the Bankruptcy Rules or an order of the Bankruptcy Court.

10.3 Exemption from Transfer Taxes. Pursuant to 11 U.S.C. §1146(a), the issuance, transfer, exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust or other security interest, the making or assignment of any lease or sub-lease or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any deeds, bills of sale or assignment executed in connection with any of the transactions contemplated under the Plan shall not be subject to any stamp, real estate transfer, mortgage recording or other similar tax.

10.4 Certain Securities Laws Considerations. Section 1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a plan of reorganization from registration under section 5 of the Securities Act and state laws if three principal requirements are satisfied: (i) the securities must be offered and sold under a plan of reorganization and must be securities of the debtor, of an affiliate participating in a joint plan with the debtor, or of a successor to the debtor under the plan; (ii) the recipients of the securities must hold Claims against or interests in the debtor; and (iii) the securities must be issued in exchange (or principally in exchange) for the recipient's Claims against or interests in the debtor. The Plan Proponents believe that the offer and sale of interests in the Loan LLCs under the Plan satisfies the requirements of Section 1145(a)(1) of the Bankruptcy Code and the membership interests in the Loan LLCs are,

therefore, exempt from registration under the Securities Act and state securities laws.

To the extent that the membership interests in the Loan LLCs are issued under the Plan and are covered by Section 1145(a)(1) of the Bankruptcy Code, such membership interest may be resold by the holders thereof without registration unless, as more fully described below, the holder is an “underwriter” with respect to such securities. Section 1145(b)(1) of the Bankruptcy Code sets forth the definition of “underwriter”. Whether or not any particular person would be deemed to be an “underwriter” with respect to a membership interest in a Loan LLC to be issued pursuant to the Plan would depend upon various facts and circumstances applicable to that person. Accordingly, the Plan Proponents express no view as to whether any particular person receiving a membership interest in a Loan LLC under the Plan would be an “underwriter” with respect to such membership interest in a Loan LLC. The Plan Proponents therefore recommend that potential recipients of the membership interests in the Loan LLCs consult their own counsel concerning whether they may freely trade their interests without compliance with the Securities Act, the Exchange Act or similar state and federal laws.

10.5 Governing Law. Except to the extent the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under the Plan shall be governed by and construed and enforced in accordance with the laws of the State of Arizona.

10.6 Headings. The headings of the Articles, Sections and subsections of the Plan are inserted for convenience only and shall not affect the interpretation of the Plan.

10.7 Amendment and Modification of the Plan. The Plan Proponents may propose amendments to or modifications of the Plan at any time prior to confirmation of the Plan with the leave of the Bankruptcy Court or as permitted by the Bankruptcy Code or Bankruptcy Rules. After confirmation of the Plan, the Plan Proponents may amend or modify the Plan, with the approval of the Bankruptcy Court, so long as it does not materially or adversely affect the interests of creditors or other parties in interest as set forth herein, to remedy any defect or omission or to reconcile any inconsistencies in the Plan or in the Confirmation Order, in such a manner as may be necessary to carry out the purposes and intent of the Plan.

10.8 Withdrawal of Plan. The Plan may be withdrawn or revoked prior to the entry of the Confirmation Order at the exclusive election of the Plan Proponents.

10.9 Binding Effect. The Plan shall be binding upon, and shall inure to the benefit of the Debtor, its Creditors, the holders of Interests, and its successors and assigns.

10.10 Quarterly Fees. The quarterly fees required by 28 U.S.C. § 1930(a)(6) will be paid to, and reports will be filed with, the Office of the United States Trustee until application is made for entry of a final decree. Application for a final decree can be made when the Plan has been fully administered, which for purposes of the Plan shall mean when the Plan

has been substantially consummated, as that term is defined in § 1101(2) of the Bankruptcy Code.

EXHIBIT 3

Shelton Freeman

From: Gaines, Heather [hgaines@dmyl.com]
Sent: Thursday, October 16, 2008 3:10 PM
To: sgood@fclaw.com
Cc: Shelton Freeman
Subject: ML/Radical Bunny

Another question . . .

Given the likely number of members, and the nature of these LLC's, is there any reason to restrict transfers of Membership interests? It seems like it would be cumbersome, and not really serve any purpose. I'm thinking we just say that the Board has to approve of a transfer, and will not unreasonably withhold such approval. And that's about it.
Heather

Heather K. Gaines
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Shelton Freeman

From: Gaines, Heather [hgaines@dmyl.com]
Sent: Thursday, October 16, 2008 2:34 PM
To: sgood@fclaw.com
Cc: Shelton Freeman; creece@fclaw.com
Subject: ML/Radical Bunny

Steve:
A few more questions . . .

I'm setting this up with a Board of Directors, I'm saying 5 directors initially -- does that seem reasonable? Do we want more or less? 5 seems like a good number to me, although if really we're talking about a single loan, secured by a limited number of parcels of real property, a smaller Board (of 3) might be appropriate.

Do we want to require that Directors be Members (or representatives of Members, if there are Members who are not individuals)? Or allow for outside Directors? If we're still going to have some sophisticated individual members, it might make sense to limit the directors to being members. If all of the intermediate entities are being dissolved, however, and leaving us with individual interest-holder Members, we might want to allow for professional outside Directors.

Thoughts?

Heather

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Shelton Freeman

From: Gaines, Heather [hgaines@dmyl.com]
Sent: Friday, October 17, 2008 9:15 AM
To: sgood@fclaw.com; creece@fclaw.com
Cc: Shelton Freeman
Subject: Operating Agreement
Attachments: I49122.DOC

Steve:

Attached is a draft operating agreement, to use as a starting point. As I said when we spoke earlier this week, I have no pride of authorship -- I really view this just as a starting point, and welcome any input you or Cathy may have.

Heather

Heather K. Gaines
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Shelton Freeman

From: Gaines, Heather [hgaines@dmyl.com]
Sent: Friday, October 17, 2008 9:22 AM
To: sgood@fclaw.com; creece@fclaw.com
Cc: Shelton Freeman
Subject: ML Operating agreements
Attachments: I49507.DOC

Attached is a slightly updated draft (showing changes in redline). Please disregard the last draft.
Heather

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Shelton Freeman

From: GOOD, STEPHEN [SGOOD@FCLAW.com]
Sent: Friday, October 17, 2008 9:15 AM
To: Gaines, Heather
Cc: Shelton Freeman; REECE, CATHY
Subject: RE: ML/Radical Bunny

I think 5 is a good number, and it seems to me that a director should not have to also be a member.

From: Gaines, Heather [mailto:hgaines@dmyl.com]
Sent: Thursday, October 16, 2008 2:34 PM
To: GOOD, STEPHEN
Cc: Shelton Freeman; REECE, CATHY
Subject: ML/Radical Bunny

Steve:
A few more questions . . .

I'm setting this up with a Board of Directors, I'm saying 5 directors initially -- does that seem reasonable? Do we want more or less? 5 seems like a good number to me, although if really we're talking about a single loan, secured by a limited number of parcels of real property, a smaller Board (of 3) might be appropriate.

Do we want to require that Directors be Members (or representatives of Members, if there are Members who are not individuals)? Or allow for outside Directors? If we're till going to have some sophisticated individual members, it might make sense to limit the directors to being members. If all of the intermediate entities are being dissolved, hwoever, and leaving us with individual interest-holder Members, we might want to allow for professional outside Directors.

Thoughts?

Heather

Heather K. Gaines
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Shelton Freeman

From: GOOD, STEPHEN [SGOOD@FCLAW.com]
Sent: Wednesday, October 22, 2008 6:00 PM
To: Gaines, Heather
Cc: Shelton Freeman; REECE, CATHY
Subject: RE: ML/Radical Bunny

Heather -

Thank you for your note. I visited briefly with Cathy this afternoon to discuss timing issues. I expect to be able to devote some attention to the draft document towards the end of this week or early next week and will circle back with comments with you then. If you have questions, thoughts, suggestions, etc. in the interim, please let me know.

Thanks,
Steve

Stephen A. Good
Fennemore Craig, P.C.
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012-2913
602.916.5395 (direct phone)
602.916.5595 (direct fax)
sgood@fclaw.com

From: Gaines, Heather [mailto:hgaines@dmyl.com]
Sent: Monday, October 20, 2008 3:29 PM
To: GOOD, STEPHEN; REECE, CATHY
Cc: Shelton Freeman
Subject: ML/Radical Bunny

Just following up on the Operating Agreements. Let me know what the status is on revising the drafts I sent.
Thanks,
Heather

Heather K. Gaines
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Shelton Freeman

From: GOOD, STEPHEN [SGOOD@FCLAW.com]
Sent: Wednesday, November 12, 2008 11:02 AM
To: Gaines, Heather
Cc: REECE, CATHY; Shelton Freeman; Kara Gibson
Subject: RE: ML/Radical Bunny
Attachments: PHX-2131801-Form of Operating Agreement - Mortgages Limited Noteholder LLCs.DOC;
PHX-2131801-v0-Form of Operating Agreement - Mortgages Limited Noteholder LLCs.DOC

Heather -

Attached for your consideration are clean and redlined drafts of the template Operating Agreement. After you have had an opportunity to review the attached, please let me know what questions, comments, concerns, etc. you may have.

Thanks,
Steve

From: Gaines, Heather [mailto:hgaines@dmyl.com]
Sent: Wednesday, October 29, 2008 4:10 PM
To: GOOD, STEPHEN
Cc: REECE, CATHY; Shelton Freeman; Kara Gibson
Subject: ML/Radical Bunny

Steve:

I had a chance to look through the form of Operating Agreement one more time, and made some additional changes. I'm free to talk about this any time the rest of this week, if you've had a chance to look at it yet.

Heather

Heather K. Gaines
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EXHIBIT 4

Letter Agreement

- 1) Review 9019 motions for University & Ash and Centerpoint (Tempe Land Company, LLC) and Vento and if no agreement is made by Monday, October 6, 2008 then, Mortgages Ltd. will withdraw the 9019 motion;
- 2) Review MK, Bison Communities, and SOJAC settlements and if Mortgages Ltd., Investor Committee and Radical Bunny, LLC cannot agree by Monday, October 6, 2008, all will be continued for 2 weeks and if no agreement is reached, the motions will be withdrawn;
- 3) Review Rightpath settlements and if Mortgages Ltd., Investor Committee and Radical Bunny, LLC cannot agree by Monday, October 6, 2008, then Mortgages Ltd. will decide whether to proceed after consultation with relevant parties ;
- 4) Review Centerpoint financing and if Radical Bunny, LLC and the Investors Committee agree, hearing goes forward as planned; otherwise continue financing motion on Centerpoint for two (2) weeks;
- 5) Agree that no new 9019 motions will be filed unless Mortgages Ltd., Investor Committee and Radical Bunny, LLC approve of settlement;
- 6) Mortgages Ltd., Radical Bunny, LLC, Mortgages Ltd. and Investor Committee will cooperate in formulating plan of reorganization;
- 7) The hearing on October 21st, 2008 shall remain on the calendar pending further agreement; and
- 8) Nothing in this agreement prevents Mortgages Ltd. from making ^{separate} presentations to other parties regarding the above deal points.

Handwritten initials and marks:
sk
ck
W
CJ
X

Dated this 1st of October, 2008.

DEGONCINI MCDONALD YETWIN & LACY, P.C.

BY

Signature of Shelton L. Freeman

SHELTON L. FREEMAN
ATTORNEYS FOR RADICAL BUNNY, LLC

FENNEMORE CRAIG, P.C.

BY

Signature of Cathy L. Reece

CATHY L. REECE (SUBJECT TO APPROVAL OF
OFFICIAL INVESTOR COMMITTEE)
ATTORNEYS FOR OFFICIAL INVESTORS COMMITTEE

JENNINGS, STROUSS & SALMON, P.L.C.

BY

Signature of Carolyn Johnson

CAROLYN JOHNSON
ATTORNEYS FOR THE DEBTOR,
MORTGAGES LTD.

MORTGAGES, LTD.

BY

Signature of Richard Feldheim

RICHARD FELDHEIM
PRESIDENT AND CEO

MORTGAGES, LTD.

BY

Signature of Chris Olson

CHRIS OLSON
CFO

MORTGAGES, LTD.

BY

Signature of George Everette

GEORGE EVERETTE
VICE PRESIDENT & CIO