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12 The Liquidating Trust of Mortgages Ltd.

13 **IN THE UNITED STATES BANKRUPTCY COURT**  
14 **FOR THE DISTRICT OF ARIZONA**

15 In re:

16 MORTGAGES LTD.,

18 Debtor.

Chapter 11

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

**SUPPLEMENT TO JOINT STATEMENT  
OF MATERIAL FACTS OF RADICAL  
BUNNY AND LIDUIDATING TRUST FOR  
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

1 Creditor RADICAL BUNNY, L.L.C. (“RBLLC”) and Kevin T. O’Halloran,  
2 Trustee of the Liquidating Trust of Mortgages, Ltd. (“Liquidating Trust”), by and  
3 through their duly authorized attorneys, hereby supplement their Joint Statement  
4 of Material Facts (“Joint Statement”), DE 2395.

5 RBLLC and Liquidating Trust desire to clarify certain terms of the Joint  
6 Statement related to professional services provided by DMYL on behalf of RBLLC  
7 (hereinafter, “RBLLC/DMYL”) in connection with the development of the plan of  
8 reorganization in this case, and stipulate to the following additional facts:  
9

10 1. As indicated in paragraph 32 of the Joint Statement, for the first six  
11 months of this case, RBLLC/DMYL worked cooperatively with the OIC and  
12 numerous other constituents to formulate, draft and negotiate a plan of  
13 reorganization.

14 2. Shelton L. Freeman of DMYL, the OIC and its counsel met with other  
15 constituents, including the Official Committee of Unsecured Creditors, the VTL  
16 Committee, shareholders, investors and the Debtor, to discuss the elements for  
17 formulating a proposed plan. Mr. Freeman and the OIC’s counsel had numerous  
18 discussions aside from those meetings in which the OIC’s counsel and counsel  
19 for RBLLC created the terms, concepts and framework of a plan of reorganization.  
20 Based on these discussions, Mr. Freeman prepared an initial plan outline and e-  
21 mailed it to counsel for the OIC on October 9, 2008, a copy of which is attached  
22 hereto as Exhibit A. That initial outline was revised the same day by counsel for  
23 the OIC and was subsequently revised as RBLLC and OIC worked through the  
24 early stages of the plan negotiating process.  
25

26 3. Mr. Freeman and OIC’s counsel had numerous additional meetings  
27 with many other constituent parties, including the Debtor, other Committees  
28

1 appointed in this case and investor groups, to develop acceptable plan terms from  
2 the outline. Based on feedback from those discussions and meetings, the OIC  
3 and RBLLC created the terms of an initial version of a plan which RBLLC began  
4 drafting. The initial draft plan prepared by DMYL was e-mailed to counsel for the  
5 OIC on November 4, 2008, a copy of which is attached hereto as Exhibit B.  
6 Counsel for the OIC and RBLLC/DMYL, working together, made significant  
7 revisions to that initial draft plan over the next several months.

8  
9 4. Both RBLLC/DMYL and the OIC and its counsel were involved in all  
10 phases of plan formulation and drafting after both engaged in numerous meetings  
11 and negotiations with the Debtor, the Official Committee of Unsecured Creditors  
12 and others. Based on the terms, concepts and framework of the draft plan of  
13 reorganization, underlying supporting documents were required, including an  
14 operating agreement for the proposed limited liability companies to be formed  
15 under the terms of the draft plan. DMYL prepared an initial draft of an operating  
16 agreement, and sent it to counsel for the OIC, as reflected in Exhibit C attached  
17 hereto. Counsel for the OIC chose not to use the operating agreement drafted by  
18 DMYL and ultimately created its own operating agreement. Counsel for the OIC  
19 also prepared all of the remaining supporting documents for the draft plan,  
20 including the initial draft disclosure statement.

21  
22 5. As indicated in paragraph 45 of the Joint Statement, after December  
23 30, 2008, DMYL was no longer involved in the plan process, and the trustee  
24 appointed in RBLLC's own bankruptcy case withdrew RBLLC's support for the  
25 OIC Plan. The OIC and its counsel made further significant revisions to the plan  
26 before the OIC sponsored, filed and was able to confirm the OIC Plan. From  
27 December 30, 2008 until the OIC Plan was confirmed, the OIC continued to  
28

1 negotiate with parties, revise the OIC Plan and pursue confirmation of the OIC  
2 Plan as revised.

3 6. In its early draft of a plan of reorganization, RBLLC included its  
4 counsel as a "professional" with respect to compensation. The OIC did not agree  
5 to pay RBLLC's counsel fees as part of the plan of reorganization. The OIC  
6 agreed to allow RBLLC to apply for fees by motion to the Court to be filed by July  
7 6, 2009.  
8

9 DATED this 16th day of November, 2009.

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11  
12  
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COPIES sent via the U.S. Bankruptcy  
Court's ECF noticing system this  
16th day of November, 2009.

1 **COPIES** served by e-mail or  
 2 U.S. Mail this 16th day of  
 3 November, 2009, to:

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By /s/ Melissa S. Archibald

# EXHIBIT A

## Shelton Freeman

---

**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!

Melissa Archibald  
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☎ 602-282-0462  
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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 B

## 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.**

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**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 44<sup>th</sup> 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 (11<sup>th</sup>) 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 C

## 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  
DeConcini McDonald Yetwin & Lacy, P.C.  
2525 E. Broadway, Suite 200  
Tucson, AZ 85716  
(520) 322-5000  
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[www.deconcinimcdonald.com](http://www.deconcinimcdonald.com)

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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

Heather K. Gaines  
DeConcini McDonald Yetwin & Lacy, P.C.  
2525 E. Broadway, Suite 200  
Tucson, AZ 85716  
(520) 322-5000  
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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  
DeConcini McDonald Yetwin & Lacy, P.C.  
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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

Heather K. Gaines  
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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

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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](mailto: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  
DeConcini McDonald Yetwin & Lacy, P.C.  
2525 E. Broadway, Suite 200  
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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  
DeConcini McDonald Yetwin & Lacy, P.C.  
2525 E. Broadway, Suite 200  
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