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11 *Berta Walder, Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners, LLC*

12 **BEFORE THE ARIZONA CORPORATION COMMISSION**

13 In the matter of:

14 RADICAL BUNNY, L.L.C., an Arizona
15 limited liability company,

16 HORIZON PARTNERS, L.L.C., an
17 Arizona limited liability company,

18 TOM HIRSCH (aka TOMAS N.
19 HIRSCH)and DIANE ROSE HIRSCH,
20 husband and wife;

21 BERTA FRIEDMAN. WALDER (aka
22 BUNNY WALDER, a married person,

23 HOWARD EVAN WALDER, a
24 married person,

25 HARISH PANNALAL SHAH and
26 MADHAVI H. SHAH, husband and
27 wife,

28 Respondents.

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKET NO. S-20660A-09-0107

MOTION TO SUPPLEMENT
THE RECORD

Arizona Corporation Commission
DOCKETED

DEC 23 2010

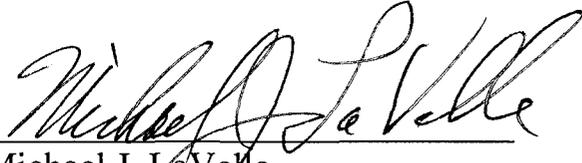
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Defendants hereby move to supplement the record with the findings of fact, conclusions of law and amended order granting Radical Bunny's administrative

1 claim for substantial contribution entered in the Mortgages LTD., bankruptcy case
2 on December 21, 2010. The order is a judicial determination of the facts
3 surrounding Radical Bunny's' claim for that its loans were secured and should be
4 considered by this body. The document did not exist during the hearing and could
5 not have been offered at that time. In addition, it is an order of the Court of which
6 this body may take judicial notice.

7
8 RESPECTFULLY SUBMITTED this 23rd day of December, 2010.

9
10 **LAVELLE & LAVELLE, PLC**

11
12 By: 

13 Michael J. LaVelle

14 2525 East Camelback Road, Suite 888

15 Phoenix, Arizona 85016

16 *Attorneys for Respondents Tom Hirsch, Diane Rose Hirsch, Berta Walder,
17 Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners,
18 LLC*

18 ORIGINAL and 13 COPIES filed this
19 23rd day of December, 2010 with:

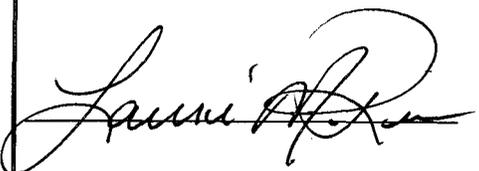
20 **ARIZONA CORPORATION COMMISSION**
21 Securities Division
22 1300 West Washington, Third Floor
23 Phoenix, Arizona 85007

23 COPY of the foregoing MAILED this
24 23rd day of December, 2010 to:

25 Lyn Farmer
26 Chief Administrative Law Judge
27 **ARIZONA CORPORATION COMMISSION**
28 1200 West Washington
Phoenix, Arizona 85007

1 Julie Coleman
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IT IS HEREBY ADJUDGED
and DECREED this is SO
ORDERED.

The party obtaining this order is responsible for
noticing it pursuant to Local Rule 9022-1.



1 SHELTON L. FREEMAN (AZ #009687)

Dated: December 21, 2010

2 **DECONCINI McDONALD YETWIN & LACY, P.C.**

3 6909 East Main Street
Scottsdale, Arizona 85251

Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

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7 Counsel to Radical Bunny, L.L.C. and
Special Counsel to G. Grant Lyon, Chapter 11
Trustee of Radical Bunny, L.L.C.

8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 In re:

Chapter 11

11 MORTGAGES LTD.,

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

12
13 **FINDINGS OF FACT AND CONCLUSIONS**
14 **OF LAW**

15 Debtor.

AND

16 **AMENDED ORDER GRANTING RADICAL**
17 **BUNNY'S ADMINISTRATIVE CLAIM FOR**
18 **SUBSTANTIAL CONTRIBUTION**

19 Creditor RADICAL BUNNY, L.L.C. ("RBLLC"), seeks an award of \$595,798.25 for a
20 substantial contribution administrative claim ("Substantial Contribution Claim") pursuant to
21 Bankruptcy Code § 502(b)(3)(D). RBLLC incurred expenses in providing a substantial
22 contribution to the bankruptcy estate ("Estate") in this case. The claim sought as an
23 administrative expense is calculated on the basis of professional services provided by
24 DMYL on behalf of RBLLC (hereinafter, "RBLLC/DMYL"), in the amount of \$572,945.50 in
25 attorneys' fees, and \$22,852.75 in costs, and is further requested pursuant to Bankruptcy
26 Code § 503(b)(4). The Liquidating Trust and others objected.

27 These detailed Findings of Fact and Conclusions of Law are entered on remand
28 from the United States Bankruptcy Panel of the Ninth Circuit.

1 This Court has considered the memoranda filed in support of the Application and in
2 support of objections to the Application and the following evidence:

3 (1) a “Joint Statement of Material Facts of Radical Bunny and Liquidating Trust for
4 Application Pursuant to 11 U.S.C. § 503(b)(3)(D) and (4) for Allowance and Payment of
5 Administrative Claim of Creditor Radical Bunny”, DE 2395 (“JTS”);

6 (2) a “Supplement to Joint Statement of Material Facts of Radical Bunny and
7 Liquidating Trust for Application Pursuant to 11 U.S.C. § 503(b)(3)(D) and (4) for
8 Allowance and Payment of Administrative Claim of Creditor Radical Bunny”, DE 2407
9 (“SJTS”); and

10 (3) the evidence supporting RBLLC’s Application, including the docket entries
11 cited in the JTS, SJTS and RBLLC’s filings in support of the Application and the record in
12 this Chapter 11 proceeding.

13 **I. FINDINGS OF FACT**

14 Based on the foregoing, this Court’s experience in the conduct of this case and the
15 negotiation and ultimate confirmation of the plan of reorganization (“Plan”) in this case,
16 and the entire record of this case, this Court finds as follows:

17 **A. General Findings of Fact**

18 1. Mortgages Ltd. (“Mortgages Ltd.” or “Debtor”) was a private lender that made
19 loans secured by real estate located in Arizona. Real estate loans advanced by Mortgages
20 Ltd. are referred to herein as the “ML Loans”. See JTS ¶ 1; DE 20, ¶ 5; DE 315, ¶ 4.

21 2. Prior to taking his own life on June 2, 2008, Scott M. Coles was the chairman
22 and Chief Executive Officer of Mortgages Ltd., and served in those roles since November,
23 1992. A trust created by Mr. Coles was the sole shareholder of Mortgages Ltd., an
24 Arizona corporation. See JTS ¶ 2; DE 20, ¶ 11; DE 315, ¶ 10.

25 3. On Friday June 20, 2008, an involuntary Chapter 7 bankruptcy petition was
26 filed against Mortgages Ltd. by two of its borrowers and a contractor. On Tuesday June
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24, 2008 ("Filing Date"), the involuntary case was converted to a Chapter 11 case when an order for relief was entered. See JTS ¶ 3; DE 1; DE 36.

4. This is an unusual Chapter 11 bankruptcy case because the Debtor, Mortgages Ltd., was itself a mortgage lender, and because this case was prompted by the suicide of Scott M. Coles, the owner and long-time manager of Mortgages Ltd. As of the Filing Date, the Debtor had advanced approximately \$894 Million of ML Loans. See JTS ¶ 17; DE 315, ¶ 5.

5. The most significant asset in the Estate was the Debtor's retained interest in about \$162 Million of the ML Loans. The value of this asset of the Estate depended on securing recovery from the Debtor's borrowers and the related real property collateral securing the ML Loans. See JTS ¶ 12; DE 198, p. 4; DE 1298, Ex. B.

6. This case was also unusual because the Debtor owned only a fractional interest in the ML Loans, with more than 80% of the fractional interests in the ML Loans actually being owned by approximately 2,700 investors ("Investors"), and managed by the Debtor. See JTS ¶ 17; DE 315, ¶ 5; DE 1298, Ex. B.

7. RBLLC was the largest creditor and the only major secured creditor of Mortgages Ltd. at the inception of this case and during the proceedings. The Debtor admitted that the almost \$200 million in outstanding loans had been advanced by RBLLC to Mortgages Ltd., and those loans were liquidated and undisputed and were not contingent. RBLLC filed a secured proof of claim in this case, with evidence of a perfected security interest in the Debtor's assets, including the Debtor's retained interest in about \$162 Million of the ML Loans, as reflected in UCC financing statements attached to RBLLC's proof of claim. RBLLC had a substantial basis to claim its secured status. See JTS ¶¶ 5-14; RBLLC's Proof of Claim No. 33, as amended, including the Declaration and other attachments thereto ("RBLLC POC No. 33"); DE 198, pp. 4, 11; DE 293-2, Ex. B; DE 1298, Ex. B.

1 8. RBLLC was formed to make loans to Mortgages Ltd. using funds from
2 various individuals seeking a favorable rate of return. More than 900 loan participants
3 provided funds to RBLLC that were loaned to Mortgages Ltd. Mortgages Ltd. then used
4 funds advanced by RBLLC to make ML Loans. RBLLC's sole source of income was from
5 loan payments made by Mortgages Ltd. Prior to the death of Scott Coles, Mortgages Ltd.
6 had been paying RBLLC more than \$2 million dollars a month in non-default interest
7 payments. Mortgages Ltd. defaulted on its obligations to RBLLC shortly before the Filing
8 Date. See JTS ¶¶ 4-12; RBLLC POC No. 33.

9
10 9. In addition to using funds loaned by RBLLC to make loans secured by
11 Arizona real estate, Mortgages Ltd. used money raised from the Investors. The Investors
12 included (1) Investors who held a direct fractional or participating interest in the ML Loans
13 ("Pass-Through Investors"); and (2) Investors who purchased and own membership
14 interests in limited liability companies ("MP Funds") controlled by Mortgages Ltd., as
15 Manager. As of the Filing Date, the Investors and MP Funds owned approximately \$732
16 million of the approximately \$894 million dollars of outstanding ML Loans. The Debtor
17 also held an interest in several MP Funds. See JTS ¶¶ 15-20; DE 20, ¶¶ 6-9, DE 198, pp.
18 4-5 & 11; DE 293-2, Ex. B; DE 315, ¶¶ 5-8; DE 1298, Ex. B; Plan.

19 10. In addition to RBLLC's loans to Mortgages Ltd. evidenced by RBLLC POC
20 No. 33, RBLLC also held \$3,748,000 in direct pass-through investments in two loans
21 made by Mortgages Ltd. See JTS ¶ 18; RBLLC POC No. 1005; DE 1298, Ex. B.

22 11. Since the Debtor stopped making interest payments to RBLLC and did not
23 repay matured loans, RBLLC had no source of income after June 2008. On October 8,
24 2008, certain RBLLC loan participants filed an involuntary bankruptcy petition against
25 RBLLC under Chapter 7 of the Bankruptcy Code, Case No. 2-08-bk-13884-CGC ("RBLLC
26 Case"), which was converted to a Chapter 11. RBLLC was authorized to employ DMYL to
27 serve as special counsel to represent RBLLC on specific matters, including representation
28 in this case. Pursuant to a stipulation, at the end of December, 2008, G. Grant Lyon

1 ("RBLLC Trustee") was appointed as Chapter 11 Trustee in the RBLLC Case. As of that
2 date, RBLLC Trustee became the representative of RBLLC's bankruptcy estate under 11
3 U.S.C. § 323(a), and RBLLC no longer had authority to act as debtor-in-possession of the
4 estate. RBLLC Trustee retained separate counsel to represent the RBLLC Trustee in this
5 case. See JTS ¶¶ 42-43.

6
7 12. The Investors asserted that their loan interests were not part of the Estate of
8 the Debtor. Two committees were appointed to represent the interests of the Investors in
9 this case: (1) the Official Committee of Investors ("OIC") and (2) the Committee of
10 Investors in the Value-To-Loan Opportunity Fund I L.L.C. ("VTLC"). See JTS ¶ 27; DE
11 258; DE 310; DE 352; DE 577.

12 13. An Official Unsecured Creditors Committee ("OCC") was appointed to
13 represent general unsecured creditors, who held about \$4 Million in unsecured debt, about
14 2% of undisputed claims. See DE 129; DE 225; DE 1531, p. 19.

15 B. RBLLC's Financial Benefit to the Estate for Operation of the Debtor

16 14. RBLLC was the only creditor to subordinate its own interests to allow the
17 Debtor to use more than \$3,000,000 of RBLLC's cash collateral to fund the Debtor's
18 operations, which benefitted the Estate. RBLLC benefitted the Estate by no less than
19 \$3,000,000 due to this funding, which significantly preserved the value of all of the assets
20 of the Estate. If the Debtor had not continued to operate, the value of the ML Loans,
21 including the Investor's fractional interests in the ML Loans, would have substantially and
22 rapidly declined in value. See JTS ¶¶ 55-60; DE 155; DE 203; DE 310, DE 458; DE 868;
23 DE 919; DE 933; DE 1075; DE 1229; DE 1296; DE 1375; DE 1500; DE 1595.

24 15. RBLLC was the only creditor to subordinate its collateral to allow the Debtor
25 to obtain \$5,000,000 in post-petition working capital to fund the Debtor's operations. This
26 financing would not have been forthcoming but for the subordination of RBLLC's priority
27 interest in more than \$13 Million Dollars of RBLLC's collateral, which benefitted the Estate.
28 RBLLC received a \$50,000 payment from this loan representing RBLLC's only payment

1 from the Debtor in this case from the Filing Date through the entry of the Confirmation
2 Order. This was the only payment made to RBLLC from the Estate. RBLLC benefitted the
3 Estate by no less than \$4,950,000 due to this funding, which significantly preserved the
4 value of all of the assets of the Estate. See JTS ¶¶ 67-72; DE 53; DE 165; DE 197; DE
5 206, DE 262; DE 323; DE 459; DE 868; DE 919; DE 933; DE 1075; DE 1229; DE 1296;
6 DE 1375; DE 1500; DE 1595.

7
8 16. Every creditor and the Investors benefitted by RBLLC's funding of the
9 Debtor's post-petition operations. No other Estate creditor or Investor contributed any
10 funds for the operation of the Debtor during the pendency of this case. The Investors'
11 interests in the ML Loans were never subordinated to operate the Debtor or preserve
12 assets of the Estate, despite the fact that 80% of the loan portfolio managed by the Debtor
13 was held by those Investor interests. See JTS ¶¶ 56, 59-60, 68-72; DE 53; DE 155; DE
14 203; DE 262; DE 310; DE 323; DE 458; DE 459; DE 868; DE 919; DE 933; DE 1075; DE
15 1229; DE 1296; DE 1375; DE 1500; DE 1595; RBLLC POC No. 33.

16 17. The Debtor did not pay RBLLC more than \$23 million dollars in non-default
17 interest payments due RBLLC from June, 2008 through entry of the order confirming the
18 plan of reorganization in this Case ("Confirmation Order") on May 20, 2009. In contrast,
19 the Investors did not allow interest payments on their pass-through investments to be used
20 to fund operations of the Debtor. Instead the Investors demanded, and were granted the
21 right to receive interest from the ML Loans in which they held an interest from the Filing
22 Date. See JTS ¶¶ 6-7, 59; DE 310; DE 458; DE 1011.

23 18. RBLLC subordinated its first priority security interest in the Debtor's interest
24 in more than \$94 million in the Centerpoint ML Loans to provide collateral for a \$2,800,000
25 interim loan that the Debtor represented was essential for preservation of the Centerpoint
26 property. In contrast, none of the Investors' interests in Centerpoint were subordinated.
27 This benefitted the Estate by at least \$2,800,000, based on the representations of the
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Debtor regarding the damage to the Centerpoint property if that interim loan was not made. See JTS ¶¶ 76-78; DE 293-2, Ex. B; DE 376, Exs. A & B; DE 408; DE 1298, Ex. B.

19. RBLLC pledged its interest in ML Loans, under the Plan, to secure \$20 Million in exit financing (“Exit Financing”) that is the source of payment of all post-confirmation expenses, including final applications of administrative claimants, under the confirmed Plan. Without the pledge of RBLLC’s interests in the ML Loans, that Exit Financing would not have been available without a ruling that RBLLC was unsecured. Based on its proportionate share of the ML Loans, this provided at least \$4,000,000 in benefit, in addition to other collateral under RBLLC’s proof of claim which was released under the terms of the Plan to fund the Liquidating Trust. See JTS ¶ 41; Plan; RBLLC POC No. 33.

20. Based on the record of this case, RBLLC’s financial contributions to the Estate provided no less than \$14,750,000 in benefit to the Estate. RBLLC did not receive any preferred treatment under the Plan based on RBLLC’s existing rights prior to the Filing Date. RBLLC would have been entitled to the same treatment under the Plan without providing \$14,750,000 in benefit to the Estate. RBLLC did not receive any additional financial benefit under the Plan based on RBLLC’s funding of the entire reorganization of the Debtor. The benefit to the Estate from RBLLC’s contributing \$14,750,000 to the Estate substantially exceeded the benefit to RBLLC from making those financial contributions. Additionally, RBLLC’s contributions provided substantial benefit to the Investors, who did not bear the ongoing costs of the reorganization of the Debtor, but who benefitted from those operations and whose professionals were paid from the Estate.

21. The requested amount of the Substantial Contribution Claim (\$595,798.25) is just four percent (4.0%) of the \$14,750,000 in benefit that RBLLC provided to the Estate. It is reasonable for RBLLC to seek the Substantial Contribution Claim in an amount measured by the amount of attorneys fees and costs that RBLLC incurred (excluding attorneys fees and costs incurred only for the benefit of RBLLC). On the foregoing facts

1 alone, RBLLC has met its burden to establish its right to recover the entire Substantial
2 Contribution Claim. The Substantial Contribution Claim is reasonable and is substantially
3 less than the financial benefits provided by RBLLC to the Estate.

4 22. The Liquidating Trust has claimed that the Estate incurred costs due to legal
5 positions taken later in this case by the RBLLC Trustee. RBLLC provided evidence from
6 the applications for attorneys fees filed by the OIC and the Debtor that such cost was
7 approximately \$70,300. See DE 2088, pp. 7-9. Even if the \$14,750,000 in benefit is
8 reduced by \$70,300, RBLLC would still have provided \$14,679,700 in benefit. The
9 requested amount of the Substantial Contribution Claim (\$595,798.25) is still about four
10 percent (4.0%) of that \$14,679,700 amount. The costs imposed in this case on the Estate
11 by the RBLLC Trustee does not affect RBLLC's right to recover the entire Substantial
12 Contribution Claim.

13
14 C. Benefit Provided by RBLLC and Its Counsel to the Estate for Preserving
15 Assets of the Estate

16 23. In addition to RBLLC's significant direct financial benefits, RBLLC/DMYL
17 provided substantial benefits to the Estate based upon services provided for the benefit of
18 all creditors of the Estate. RBLLC/DMYL took positions that benefitted all creditors in
19 preserving assets of the Estate.

20 24. During the gap period, the Debtor obtained a \$500,000 loan from Southwest
21 Value Partners Fund XIV, LP ("Gap Lender"), due and payable on July 23, 2008. (DE 165,
22 ¶16). Prior to the appointment of any committees in this case, on June 27, 2008, the Debtor
23 sought approval for a \$5,000,000 working capital loan tied to an additional \$120,000,000
24 construction loan from the Gap Lender. (DE 53). By July 14, 2008, further disclosures
25 revealed that the requested construction loan had increased to \$124,100,000, and the scope
26 of the required security for the loans had expanded to all assets of the Debtor. (DE 165).
27 Interest and points on the working capital loan were fifteen percent (15%). The proposed
28 working capital loan would mature on October 31, 2008, if the construction loan was not

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timely approved by the bankruptcy court. Half of the proceeds from the working capital loan would not be used for the operation of the Debtor, but would repay the GAP Loan and another loan to the Debtor. These loans were to be secured by a super-priority lien on all assets of Debtor, subject only to valid, perfected, enforceable and nonavoidable liens and security interests existing as of the Filing Date. See JTS ¶¶61.

25. RBLLC/DMYL, along with other creditors and individual investors (including an “unofficial” committee of investors), objected to the Debtor’s attempt to encumber virtually all assets of its Estate, and raised objections on behalf of all the creditors of the Debtor’s Estate as to whether the proposed financing would benefit the Estate. See JTS ¶¶ 62-64; DE 53; DE 75; DE 79; DE 165; DE 1888, Ex. F, ¶ 11.

26. RBLLC/DMYL also identified alternative providers of post-petition financing on more favorable terms, and urged the Debtor to consider other financing alternatives. RBLLC/DMYL located a lender willing to provide funding without requiring a lien on all assets of the Estate, and that lender appeared, with a check, at an early financing hearing. See JTS ¶ 63; DE 1888, Ex. F, ¶ 11.

27. By July 18, 2008, due in part to the strenuous objections of RBLLC, the Debtor withdrew the requested Gap Lender DIP financing. By that time, the interest of other lenders in competing to provide financing was evident, and all hearings on the requested financing were vacated on July 21, 2008 to allow the Debtor to consider financing alternatives. See JTS ¶ 64; DE 197; DE 206.

28. On August 1, 2008, the Debtor again sought a hearing on emergency financing, but the proposed terms were limited to a \$5,000,000 initial DIP loan, which no longer included a lien on all estate assets. The interest rate (and points) for that loan were reduced to 13%, and the new loan terms were for a one year maturity date that would not be accelerated if construction financing was not approved. See JTS ¶ 67; DE 53; DE 165; DE 197; DE 206; DE 262; DE 459.

1 29. RBLLC/DMYL's efforts provided incalculable benefit, by ensuring that the
2 interests of the Estate were protected from financing that could have removed all value
3 from the Estate. If the initial proposed financing had been approved, the Estate could
4 have incurred up to \$124,100,000 in debt that would have primed payment of all claims of
5 the Estate due to the preferred returns that would be paid to the Gap Lender. For the
6 construction loan, the Gap Lender would be guaranteed interest plus excessive preferred
7 returns; the Gap Lender would have been repaid before the Debtor's creditors received one
8 dime. Instead, the Debtor used RBLLC's cash collateral and incurred only \$5,000,000 in
9 working capital to fund the Debtor's operations, subordinating only RBLLC's collateral
10 interest. RBLLC's efforts provided as much as \$119,100,000 in benefit to the Estate, and
11 the benefit to the Estate from RBLLC/DMYL's actions exceeded the benefit to RBLLC. See
12 JTS ¶¶ 74-75; DE 53; DE 75; DE 165; Plan.

13 30. This key benefit provided by RBLLC occurred prior to official committee
14 appearances. On August 5, 2008, counsel for the OIC filed a notice of appearance, DE 290.
15 On August 6, 2008, counsel for the OCC filed a notice of appearance, DE 313. Thus, this
16 benefit was not duplicative with other Estate professionals.

17 31. After the appointment of the OIC and the OCC, RBLLC/DMYL continued to
18 work with those Committees to prevent the Debtor from entering into financing that was
19 unreasonably burdensome to RBLLC and the other creditors of the Debtor's Estate.
20 RBLLC objected on behalf of all creditors of the Estate and reduced the expenses of the
21 Estate by providing detailed objections. For example, RBLLC filed a 12 page objection to
22 unacceptable DIP financing terms in DE 376. The OCC filed a 2 page objection joining in
23 filed objections, DE 380.

24 32. DMYL's services were necessary for RBLLC to subordinate RBLLC's
25 collateral interest in certain ML Loans to provide a \$500,000 Interim Working Capital DIP
26 Loan to fund the Debtor's operations (subject to use of RBLLC's cash collateral, as
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1 available). No other creditors' lien or security interest was subordinated for the Interim
2 Working Capital DIP Loan. See JTS ¶¶ 68-69; DE 323.

3 33. DMYL's services also were provided in connection with RBLLC's
4 subordination of RBLLC's collateral interest in certain ML Loans for the \$5,000,000 Final
5 Working Capital DIP Loan to fund the Debtor's operations. No other creditors' lien or
6 security interest was subordinated for the Final Working Capital DIP Loan. See JTS ¶¶ 70-
7 72; DE 459.

8 34. RBLLC helped structure agreements on financing, cash collateral, and the
9 Plan that ensured the cash flow to allow the Debtor to continue operations. DMYL and the
10 counsel for the OIC divided work based upon strength and resources in dealing with these
11 financing issues. This division of labor was particularly effective given the repeated
12 "emergency" filings by the Debtor which required extensive analysis and short deadlines
13 for objections. See JTS ¶ 53.

14 35. RBLLC's primary attorney, Shelton L. Freeman, was routinely requested to
15 participate in meetings with the OIC, which sometimes requested that RBLLC lead the
16 charge on issues that would have adversely affected the Estate if the Debtor's acts went
17 unchallenged. See JTS ¶ 54.

18 36. RBLLC/DMYL objected to initial proposals for post-petition financing related
19 to the Tempe Land Company's Centerpoint that would have been unreasonably
20 burdensome to RBLLC and other creditors of the Estate. Up to \$75,000,000 of the
21 proposed construction loan from the Gap Lender was to be used for Tempe Land Company's
22 Centerpoint project. See JTS ¶¶ 74-75; DE 53; DE 75.

23 37. RBLLC also objected on behalf of all creditors of the Estate and reduced the
24 expenses of the Estate by providing detailed objections to Centerpoint financing requests.
25 For example, RBLLC filed detailed objections to Centerpoint DIP financing, DE 435, 987
26 and 1008. The OCC filed a one page objection joining in RBLLC's objections, DE 975. In
27 contrast to RBLLC's efforts on behalf of the Estate, the OIC filed a detailed objection of
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1 reasons that ML could not pledge or subordinate the Investors' interest in the Centerpoint
2 loans, DE 984.

3 38. DMYL's services were necessary for RBLLC to subordinate RBLLC's first
4 priority security interest in the Centerpoint ML Loans as collateral for a \$2,800,000 interim
5 loan for preservation of Centerpoint. None of the Investors' interest in the Centerpoint
6 Loans was subordinated to the \$2,800,000 interim loan for preservation of Centerpoint.
7 See JTS ¶¶ 77-78; DE 483.

8 39. DMYL's services also include those incurred in the preservation of funds
9 wrongfully disbursed to an affiliate of Tempe Land Company. RBLLC was the first creditor
10 to: (1) raise concerns about the improper use of proceeds of the initial \$2,800,000 interim
11 loan to Tempe Land Company and the Debtor's failure to properly monitor such funding
12 and (2) request replacement of the improperly used funds. Although the Debtor never
13 recovered \$568,706 in funds wrongfully disbursed to an affiliate of Tempe Land Company,
14 RBLLC/DMYL's actions ensured that the Debtor did not continue to advance funds to
15 Tempe Land Company that were not used to preserve the Debtor's collateral, again
16 ensuring preservation of Estate assets and providing tangible benefit to this Estate.
17 Although the Debtor had sought a \$4,800,000 loan for Centerpoint, the Debtor never
18 sought approval for the additional \$2,000,000 after the improper use of proceeds was
19 raised. See JTS ¶¶ 79-80; DE 468; DE 1078; DE 1888, Ex. F ¶ 11.

20 40. The benefit to the Estate from RBLLC/DMYL's efforts in preserving the
21 assets of the Estate substantially exceeded the benefit to RBLLC from those efforts.
22 RBLLC/DMYL's efforts were necessary to provide: (1) \$3,000,000 in cash collateral for the
23 Debtor's operations; (2) \$5,000,000 in working capital for the Debtor's operations at more
24 favorable rates; and (3) \$2,800,000 in financing to preserves the assets of Centerpoint.
25 RBLLC/DMYL's efforts also ensured: (1) that the Estate was not subjected to more than
26 \$100 million in debt that could have prevented any payment to creditors of the Estate; and
27 (2) that at least \$2,000,000 in debt was never incurred for Centerpoint for improper
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1 purposes. RBLLC's contributions to the Estate for preserving assets of the Estate
2 provided millions of dollars in benefit to the Estate in excess of any benefit provided to
3 RBLLC.

4 41. For RBLLC/DMYL's services in preserving assets of the Estate, it is
5 reasonable for RBLLC to seek a claim for substantial contribution in an amount measured
6 by the amount of attorneys fees and costs that RBLLC incurred. RBLLC has met its
7 burden to establish its right to recover the requested amount calculated on services
8 provided for preserving the assets of the Estate of \$356,253. The claim amount requested
9 is millions of dollars less than the benefit to the Estate provided by RBLLC.

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11 D. Benefit Provided by RBLLC and Its Counsel to the Estate for Formulating the
12 Plan and Working on a Consensual Reorganization

13 42. For the first six months of this case, RBLLC/DMYL worked cooperatively with
14 the OIC and numerous other constituents to formulate, draft and negotiate a plan of
15 reorganization. See JTS ¶ 32.

16 43. DMYL created the original outline for a plan and the major concepts in that
17 plan outline are the same concepts contained in the confirmed Plan of Reorganization.
18 See SJTS ¶ 2 & Ex. A; DE 2398, Ex. 1.

19 44. DMYL prepared an initial plan of reorganization, and RBLLC/DMYL
20 considered the interests of all the creditors of the Estate in formulating that plan. DMYL
21 worked with the Committees appointed in this case and the Debtor to revise that plan to
22 create a consensual, confirmable plan of reorganization. Most of the key terms that DMYL
23 worked on were decided by the end of December, 2008, and the same plan structure
24 developed by DMYL was reflected in the initial plan filed by the OIC and the amended plan
25 filed by the OIC that was confirmed. . See JTS ¶ 34; SJTS ¶ 3 & Ex. B; DE 1888, Ex. F, ¶¶
26 9-10; DE 1297; Plan; DE 2398, Ex. 2.

27 45. While working toward a consensual plan, RBLLC/DMYL worked with the
28 OIC to file a joint objection to extending the Debtor's exclusivity due to the Debtor's failure

1 to provide a feasible plan of reorganization in this case. That joint objection was also
2 joined by the OCC. RBLLC/DMYL's work to end the Debtor's period of exclusivity was
3 necessary for the creditor constituencies to file a competing plan to reduce the Debtor's
4 mounting administrative expenses. See JTS ¶ 33; DE 572; DE 688; DE 1888, Ex. F, ¶¶ 9-
5 10.

6 46. The Debtor made no good faith effort to create a consensual plan with the
7 OIC. See DE 1937, p. 11, lines 24-25.

8 47. RBLLC/DMYL's work toward a confirmable plan of reorganization was
9 successful because (1) RBLLC/DMYL provided the framework for the plan that was
10 ultimately confirmed in this case; and (2) RBLLC/DMYL's draft plan included significant
11 portions of the plan that was ultimately confirmed in this case. See JTS ¶ 34; SJTS ¶ 3 &
12 Ex. B; DE 1888, Ex. F, ¶¶ 9-10; DE 1297; Plan; DE 2398, Ex. 2.

13 48. Without the contribution made by DMYL to the creation, negotiation and
14 revision of the plan, the OIC and other constituents would have had to perform additional
15 work at the expense of the Debtor's Estate. Additionally, RBLLC/DMYL's contributions
16 toward a feasible plan of reorganization could not be duplicated by the Debtor, the OIC
17 and VTLC because RBLLC was the only party with a significant economic stake aligned
18 with the interests of the Estate. See JTS ¶¶ 9, 17; SJTS ¶ 3, Ex. B; DE 310; DE 2398, Ex.
19 2; Plan.

20 49. DMYL services related to the proposed plan included: (1) drafting a form
21 operating agreement necessary for the submission and ultimate implementation of the
22 plan; and (2) clarification of other asset management and financing documents essential to
23 the proposed plan. Although the OIC later proposed the plan and supporting documents
24 on its own (after DMYL no longer represented RBLLC in connection with the Debtors'
25 reorganization), DMYL's services still contributed to a successful reorganization in this
26 case. Even the professionals for the OIC initially made revisions to the DMYL documents
27 and prepared alternative and additional operating agreements to support the plan filed by
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1 the OIC, as part of actual and necessary services provided by the OIC's professionals in
2 this case. See SJTS ¶ 4, Ex. C; DE 2398, Ex. 3; DE 1879.

3 50. After December 30, 2008, when the RBLLC Trustee was appointed,
4 RBLLC/DMYL took no further role in the plan process in this case. The RBLLC Trustee
5 withdrew RBLLC's support for the plan RBLLC/DMYL had been working on with the OIC
6 and other creditors and investors. See JTS ¶ 45.

7 51. The OIC filed the revised plan that the OIC and RBLLC/DMYL had worked
8 on in January, 2009, before the terms of financing of the plan had been finalized. See JTS
9 ¶ 46; DE 1297.

10 52. On April 6, 2009, the OIC filed an amended plan that was confirmed and that
11 amended plan included the terms of the Exit Financing. Under the Plan RBLLC pledged
12 its interest in ML Loans to secure \$20 Million in exit financing ("Exit Financing"). Based on
13 its proportionate share of the ML Loans, this provided at least \$4,000,000 in benefit, in
14 addition to other collateral under RBLLC's proof of claim which is released under the terms
15 of the Plan to fund the Liquidating Trust. See Plan.

16 53. RBLLC/DMYL's efforts resulted in a plan that paid over \$9.5 million in
17 administrative claims in an otherwise administratively insolvent case, addressed almost a
18 billion dollars in interests in the ML Loan portfolio, and provided a priority payout to general
19 unsecured creditors. The Plan could not have been confirmed but for the support and
20 efforts of RBLLC/DMYL. See Plan; DE 2056; DE 2057; DE 2077; DE 2078; DE 2101; DE
21 2102; DE 2103; DE 2130; DE 2131; DE 2132; DE 2133; DE 2134; DE 2139; DE 2147; DE
22 2151; DE 2164; DE 2183; DE 2185; DE 2193; DE 2470; DE 2775; DE 2865.

23 54. RBLLC's contributions to the Estate for formulating and working on a plan of
24 reorganization provided millions of dollars in benefit to the Estate in excess of any benefit
25 provided to RBLLC.

26 55. For RBLLC/DMYL's efforts in formulating and working on a plan of
27 reorganization, it is reasonable for RBLLC to seek a claim for substantial contribution in an
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amount measured by the amount of attorneys fees and costs that RBLLC incurred. RBLLC has met its burden to establish its right to recover the requested amount calculated on services provided in connection with the confirmed Plan of \$118,810. The claim amount requested is millions of dollars less than the benefit to the Estate provided by RBLLC.

56. The Liquidating Trust objected to RBLLC/DMYL's recovery related to the formulation of a plan of reorganization in this case because the RBLLC Trustee objected to the amended plan filed by the OIC in April, 2009, and the OIC and the Debtor incurred no more than \$70,300 in total attorney's fees in connection with the RBLLC Trustee's representation as Chapter 11 Trustee for RBLLC. See JTS ¶ 51; DE 1810; DE 1879; DE 2088, pp. 7-9.

57. Even factoring in the objections by the RBLLC Trustee, DMYL/RBLLC's efforts in formulating and working on a consensual plan, along with the benefit of funding the Plan through the Exit Financing (as well as funding the operations of the Debtor) provided benefit to the Estate of millions of dollars, which greatly exceeded the minimal administrative costs incurred due to the actions of RBLLC Trustee and the entire Substantial Contribution Claim.

E. Benefit Provided by RBLLC and Its Counsel to the Estate in Resolving Borrower Claims

58. RBLLC/DMYL's efforts in connection with borrower settlements both assisted with the reorganization process and preserved assets of the Estate for the benefit of all creditors. RBLLC/DMYL, along with the OIC and other Committees, challenged, both in court and out of court, unreasonable settlements proposed by the Debtor that would have significantly impaired the value of the Debtor's interest in the ML Loans. See JTS ¶¶ 82 & 84; DE 1888, Ex. F, ¶ 12.

59. Debtor's new management and counsel negotiated numerous settlements with borrowers without any consultation of the real parties in interest, RBLLC and the

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Investors. Many of the settlements would have significantly impaired the value of the interest in the ML Loans. That resulted in numerous motions to approve settlements that required objections and significant efforts to address the respective issues of a given borrower, the collateral and impact of the proposed resolution. The objections to the Debtor's proposed settlements had reached the point that extensive discovery was scheduled (32 depositions and document production). See DE 558; DE 559; DE 560; DE 561; DE 565; DE 569; DE 570; DE 685.

60. In an effort to resolve these ongoing disputes and bring the real parties in interest into the initial settlement discussions, RBLLC/DMYL scheduled a meeting with the Debtor, its Board Members and the OIC to discuss a protocol for decision-making. As a result of a lengthy meeting, a Letter Agreement was prepared by DMYL whereby the Debtor, RBLLC and OIC agreed to coordinate future settlements and minimize the need for future objections to settlements by requiring that RBLLC and the OIC had to approve any 9019 motions filed by the Debtor. The Letter Agreement resolved the scheduled discovery, reducing administrative costs of the Estate. See DE 685 & Ex. 3.

61. RBLLC/DMYL, along with other parties compensated by the Estate, actively participated in settlement negotiations with the Debtor's borrowers to ensure appropriate resolution of their claims.

62. In some instances, modifications to proposed settlements were able to be negotiated that lessened the impact of the Debtor's attempt to give away assets of the Estate. One example of this was on the Rightpath loans. The settlement proposed by the Debtor involved a significant modification of those loans to the detriment of the Estate. Both RBLLC/DMYL and the OIC met with Rightpath and DMYL was an integral part of achieving the eventual settlement that was approved. The benefits achieved by these efforts alone exceed the amount requested. See DE 560; DE 724; DE 912. Under the proposed settlement Agreement that the Debtor had signed with Rightpath parties (DE 560, Exhibit A), the Debtor obligated the Estate to fund additional loans of \$14 million and

1 \$10 million as well as subordinate the existing loans to other financing. As a result of
2 RBLLC/DMYL's efforts along with the OIC, the subordination obligation was limited and
3 Rightpath agreed that the Debtor's failure to fund future loans would not be an offset
4 against Rightpath's obligation to pay its current loans of \$108 million.

5 63. In other instances, the Debtor did not pursue final court approval for
6 unfavorable settlements due to RBLLC/DMYL's actions, in conjunction with the OIC and
7 other estate professionals. For example, the Debtor did not pursue an unfavorable
8 settlement with Tempe Land Company that would have given away assets of the Estate,
9 including a proposed release of \$38,500,000 in principal, a proposed 42 month extension
10 of the maturity date with no payments and no accrual of interest, a proposed release of a
11 lien on 2.76 acres of excess land in downtown Tempe valued at more than \$10 million
12 dollars, and a subordination of the first lien on the remainder of the property to a
13 \$75,000,000 lien, as well as a release of all guarantors. See JTS ¶ 85; DE 561.

14 64. RBLLC's contributions to the Estate for resolving claims of borrowers
15 provided millions of dollars in benefit to the Estate in excess of any benefit provided to
16 RBLLC.

17 65. For RBLLC/DMYL's efforts in resolving borrower claims, it is reasonable for
18 RBLLC to seek a claim for substantial contribution in an amount measured by the amount
19 of attorneys fees and costs that RBLLC incurred. RBLLC has met its burden to establish
20 its right to recover the requested amount calculated on services provided in connection
21 with borrower settlements of \$97,882.50. The claim amount requested is millions of
22 dollars less than the benefit to the Estate provided by RBLLC.

23 66. The Liquidating Trust objected to RBLLC/DMYL's recovery related to the
24 resolution of borrower claims on the grounds that no fewer than eight professional's in the
25 Debtor's bankruptcy also sought compensation for their work negotiating with the Debtor's
26 approximately 50 different borrowers. See JTS ¶ 83.
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67. The record in this case evidences that RBLLC/DMYL's efforts focused on the largest ML Loans, with a total outstanding principal amount of almost \$443 million. The services provided by DMYL in connection with settlements were also necessary to move the reorganization process forward and to preserve assets of the Estate. These services benefitted all creditors of the Estate, and also reduced unnecessary administrative expenses. Additionally, RBLLC/DMYL's contributions toward resolution of borrower claims could not be duplicated by the Debtor, the OIC and VTLC because RBLLC was the only party with a significant economic stake aligned with the interests of the Estate. See JTS ¶¶ 9, 17; DE 685 & Ex. 3; DE 1888, Ex. F, ¶ 12; Plan.

E. Reasonable Compensation is Sought for Benefits to the Estate

68. As of the filing of the Application, approximately \$1,000,000 of services were provided by DMYL as attorneys to RBLLC, from the beginning of this case in June, 2008 through December 31, 2008. DMYL has been paid \$108,000 for the services provided to RBLLC to date. See JTS ¶¶ 22-24.

69. No part of the Substantial Contribution Claim involves professional services for RBLLC after December 31, 2008, in connection with this case. See JTS ¶ 23.

70. The Liquidating Trust did not object to the reasonableness of DMYL's time entries evidencing attorneys fees incurred by RBLLC. The Application is supported by Counsel's declaration who was specifically responsible for the representation of RBLLC. That Declaration provides: (1) the requested compensation was limited to the three principal activities for additional benefits provided by DMYL services on which the Substantial Contribution Claim was based, and that those services conferred a substantial benefit on the Estate; (2) the detailed time entries provided were based upon billings to RBLLC that were redacted to exclude legal services provided for the benefit of only RBLLC; (3) those detailed time entries were reviewed and the nature of the services provided required complex and sophisticated legal analysis involving bankruptcy and lending, the professional services provided were performed by attorneys and

1 paraprofessionals with the requisite expertise and skill in the areas in which they rendered
2 services, and were actual and necessary; and (4) based on experience for billings in
3 bankruptcy cases, and knowledge of the fees and charges customarily charged by
4 attorneys in this community, the requested fees are reasonable in light of the
5 compensation paid for comparable services in reorganization cases, and consistent with
6 the cost of other comparable services in Arizona. See JTS ¶¶ 22-25; DE 1888, Ex. F., ¶¶
7 2-8; 14-17.

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9 71. If DMYL does not receive compensation from the Mortgages Ltd. Estate, the
10 only source of payment will be plan distributions to RBLLC, which will only occur after
11 repayment of the Exit Financing. See JTS ¶ 25.

12 72. The total amount of administrative claims sought on behalf of the Debtor's
13 professionals exceeded \$9 million and the total administrative expenses paid or requested
14 to be paid in this case (including substantial contribution claims) total in excess of \$13
15 million. See JTS ¶ 30.

16 **II. CONCLUSIONS OF LAW**

17 Based upon the foregoing facts and the legal standards set forth in *Cellular 101,*
18 *Inc. v. Channel Communications, Inc. (In re Cellular 101, Inc.)*, 377 F.3d 1092, 1096 (9th
19 Cir. 2004)(*"In re Cellular 101, Inc."*), this Court concludes:

20 73. RBLLC is a creditor of the Estate of the Debtor in this case. RBLLC was a
21 legally presumed secured creditor in the Debtor's assets, although RBLLC's security
22 interest in the Debtor's assets was not specifically determined by this Court prior to the
23 confirmation of the Plan.

24 74. RBLLC provided direct financial benefits to the bankruptcy estate of the
25 Debtor in this case of not less than \$14,750,000. RBLLC's direct benefit to the Estate was
26 not incidental or minimal, and RBLLC was the only creditor in this case to contribute
27 financial benefits to the Estate that funded the Debtor's post-petition operations. The
28 benefit to RBLLC from RBLLC's providing such financial benefits to the Estate is

1 "outweighed by the extent of the benefit those efforts conferred on the estate." Pursuant to
2 Section 503(b)(3)(D) of the Bankruptcy Code, RBLLC is entitled to an award for
3 "substantial contribution" to the Estate in the total requested amount of \$595,798.25 based
4 on this benefit.

5 75. RBLLC provided additional benefit to the Estate that was not incidental or
6 minimal, in its additional contribution toward preserving the assets of the Estate in this
7 case. The benefit to RBLLC from RBLLC's efforts in preserving the assets of the Estate in
8 this case is "outweighed by the extent of the benefit those efforts conferred on the estate."
9 Pursuant to Section 503(b)(3)(D), RBLLC is entitled to an award for "substantial
10 contribution" to the Estate of \$356,253 based on this benefit. Additionally, pursuant to
11 Section 503(b)(4) of the Bankruptcy Code, RBLLC is entitled to "payment of reasonable
12 compensation for professional services rendered" by DMYL in the amount of \$356,253.

13 76. RBLLC provided additional benefit to the Estate that was not incidental or
14 minimal, in its contribution toward a feasible plan of reorganization in this case. The benefit
15 to RBLLC from RBLLC's efforts toward the plan of reorganization confirmed in this case is
16 "outweighed by the extent of the benefit those efforts conferred on the estate." Pursuant to
17 Section 503(b)(3)(D) of the Bankruptcy Code, RBLLC is entitled to an award for
18 "substantial contribution" to the Estate of \$118,810 based on this benefit. Additionally,
19 pursuant to Section 503(b)(4) of the Bankruptcy Code, RBLLC is entitled to "payment of
20 reasonable compensation for professional services rendered" by DMYL in the amount of
21 \$118,810.

22 77. RBLLC provided a direct benefit to the Estate that was not incidental or
23 minimal, in its contribution toward objecting to and reaching settlements with the Debtor's
24 borrowers in this case. The benefit to RBLLC from RBLLC's efforts in achieving a
25 reasonable resolution of borrower claims in this case is "outweighed by the extent of the
26 benefit those efforts conferred on the estate." Pursuant to Section 503(b)(3)(D) of the
27 Bankruptcy Code, RBLLC is entitled to an award for "substantial contribution" to the Estate
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1 of \$97,882.50 based on this benefit. Additionally, pursuant to Section 503(b)(4) of the
2 Bankruptcy Code, RBLLC is entitled to "payment of reasonable compensation for
3 professional services rendered" by DMYL in the amount of \$97,882.50.

4 78. Based on the terms of the Plan that provides that the only source of payment
5 will be plan distributions which will only occur after repayment of the Exit Financing,
6 RBLLC is further entitled to its requested award for substantial contribution as a general
7 matter of equity so that RBLLC's 900 participants are not subordinated again for the
8 benefit of the Investors and other creditors of the Estate.

9 79. RBLLC is entitled to an additional award for attorneys fees that RBLLC
10 incurred in preparing and litigating RBLLC's Application pursuant to *North Sports, Inc. v.*
11 *Knupfer (In re Wind N' Wave)*, 509 F.3d 938, 943-944 (9th Cir. 2007).

12 80. RBLLC's total requested award for substantial contribution is \$595,798.25
13 (plus attorneys fees that RBLLC incurred in preparing and litigating RBLLC's Application).
14 RBLLC is not entitled to duplicative recovery based on the independent and substantial
15 benefits provided to the Estate by RBLLC/DMYL, but RBLLC/DMYL has proven that
16 RBLLC is entitled to an award of its total Substantial Contribution Claim based on the total
17 benefits to the Estate provided by RBLLC in excess of the benefit to RBLLC.

18 IT IS HEREBY ORDERED THAT:

19 (1) The Application, which seeks an award in the amount calculated on
20 **\$572,945.50** in attorneys' fees and **\$22,852.75** in costs incurred by DeConcini McDonald
21 Yetwin & Lacy, P.C. as a substantial contribution administrative claim is approved in its
22 entirety.

23 (2) Directing the immediate payment in the amount of **\$595,798.25** to DeConcini
24 McDonald Yetwin & Lacy, P.C. as Counsel for Radical Bunny, L.L.C. as provided in the
25 Confirmation Order.

26 (3) Directing the distribution of the payment from the escrow account
27 established by the Liquidating Trust and RBLLC/DMYL pursuant to this Court's order of
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DECONCINI McDONALD YETWIN & LACY, P.C.
6909 East Main Street
Scottsdale, Arizona 85251

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January 13, 2010, DE 2595, along with all accrued interest through the date of distribution.

(4) Directing DeConcini McDonald Yetwin & Lacy, P.C. to file its supplemental application for attorneys fees that RBLLC incurred in preparing and litigating RBLLC's Application within ten days of entry of this Order.

ORDERED, SIGNED & DATED ABOVE.