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ARIZONA CORP COMMISSION
DOCKET CONTROL

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

BEFORE THE ARIZONA CORPORATION COMMISSION

12 In the matter of:

DOCKET NO. S-20660A-09-0107

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

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

**RESPONDENTS' AMENDED
MOTION TO SUPPLEMENT THE
RECORD**

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

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

Arizona Corporation Commission
DOCKETED

JUL 19 2012

22 **HOWARD EVAN WALDER**, a
23 married person,

DOCKETED BY [Signature]

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

Respondents.

27 This Motion is to supplement the record with settlement documents recently
28 signed by Greenberg Traurig and Quarles and Brady. The original Motion
inexplicitly omitted the attachments which are now included in this filing.

1 Quarles and Brady has agreed to pay \$26.5 million and Greenberg Traurig
2 to pay approximately \$62 million, both to settle claims brought by participants in
3 Radical Bunny and others related to Mortgages, Ltd. The Commission should
4 take judicial notice of these documents which have been filed in the Federal Court
5 and make them a part the record in this case. They relate to offsets for any
6 judgment that might be awarded, but more importantly they demonstrate that the
7 testimony of Mr. Kant and Mr. Hoffman was not trustworthy enough for their law
8 firms to take the risk of relying on that testimony. The Hearing Officer will recall
9 that Mr. Hoffman claimed, without a single document being sent to Radical
10 Bunny, that he instructed it to terminate operations.

11 Mr. Kant had a phantasmagorical story that had him saying people were
12 violating criminal laws and warning that people would be sent to jail as his
13 method of insulating himself and his law firm from possible liability. To be
14 accurate, both of the settlements claim that the law firms are not admitting
15 liability, but the fact of payments of these amounts is relevant to the
16 Commission's analysis of the testimony of the lawyers from the law firms that
17 have agreed to pay these huge sums.

18 The *Facciola* action was brought on behalf of a putative class of Mortgages
19 Ltd. ("ML") investors and Radical Bunny participants against, *inter alia*, Quarles
20 for legal advice it rendered and actions it took in its capacity as Radical Bunny's
21 counsel during the period prior to ML's collapse. The documents at issue here—
22 the Stipulation of Settlement between the *Facciola* plaintiffs and Quarles, and a
23 similar stipulation with Greenberg Traurig, copies of which are attached hereto as
24 Exhibits A and B—contain matters of fact that bear directly upon issues relevant
25 to this appeal and that cannot be reasonably disputed.

26 Under Rules of Evidence §201, courts may take judicial notice at any stage
27 of a proceeding so long as the facts at issue are "not subject to reasonable dispute"
28 because they are "generally known within the trial court's territorial jurisdiction"

1 or they “can be accurately and readily determined from sources whose accuracy
2 cannot reasonably be questioned.” In particular, the Hearing Officer ““may take
3 notice of proceedings in other courts, both within and without the federal judicial
4 system, if those proceedings have a direct relation to matters at issue.” *Trigueros*
5 *v. Adams*, 658 F.3d 983 (2011) (quoting *United States ex rel. Robinson Rancheria*
6 *Citizens Counsel v. Borneo*, 971 F.2d 244, 248 (9th Cir. 1992)). Judicial notice
7 can extend to particular court filings submitted in those proceedings, as well as
8 other matters of public record. *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442
9 F.3d 741, 746 n. 6 (9th Cir. 2006) (citing *Burbank-Glendale-Pasadena Airport*
10 *Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998)). Where the
11 requesting party provides the Court with the “necessary information,” judicial
12 notice must be taken. Fed. R. Evid. 201.

13 Both documents attached here are court filings that were submitted to the
14 District Court presiding over the *Facciola* action, and they bear upon facts that are
15 directly relevant to the instant appeal. Lead Plaintiffs in *Facciola* include former
16 Radical Bunny participants who brought common law and statutory claims against
17 Quarles, on behalf of a nationwide class, for actions Quarles allegedly took as
18 Radical Bunny’s former counsel during the same period at issue in this appeal.
19 According to allegations made in the *Facciola* Complaint, Quarles allegedly
20 discovered Radical Bunny’s alleged securities violations but did not withdraw
21 from representation; rather, Quarles allegedly continued to participate in, actively
22 induce, and substantially assist Radical Bunny’s allegedly unlawful activities.

23 The supplemental hearing directly concerned documents which were
24 inexplicably not produced by Quarles in discovery in the instant action, but which
25 reflect Quarles’s continued representation of Radical Bunny and the legal advice it
26 rendered to Radical Bunny regarding “interim step[s]” to be taken in connection
27 with Radical Bunny’s *ongoing* loan participation program. In spite of Mr.
28 Hoffman’s claimed admonition, Quarles has agreed to settle all claims brought

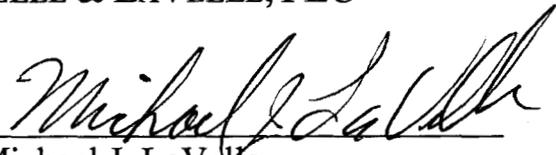
1 against it in *Facciola* in exchange for its payment to the plaintiff class of over
2 \$26.5 million pursuant to the Stipulation of Settlement. Greenberg has agreed to
3 pay over \$62 million.

4 Conclusion

5 Because Exhibits A and B have a direct relationship to matters at issue in
6 the instant appeal and because they are not subject to reasonable dispute,
7 Defendants respectfully request that they be judicially noticed.

8
9 RESPECTFULLY SUBMITTED this 19th day of July, 2012.

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

17 ORIGINAL and 13 COPIES filed this
18 19th day of July, 2012 with:

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

23 COPY of the foregoing MAILED this
24 19th day of July, 2012 to:

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

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 12 Revocable Living Trust Dated March 15, 1995; Judith A. Baker

13 UNITED STATES DISTRICT COURT
 14 DISTRICT OF ARIZONA
 15

16 ROBERT FACCIOLA, et al.,
 17 Plaintiffs,
 18 vs.
 19 GREENBERG TRAUIG, LLP, a New
 York limited liability partnership, et al.,
 20 Defendants.
 21

Case No. 2:10-cv-01025-FJM

**STIPULATION OF SETTLEMENT
 BETWEEN LEAD PLAINTIFFS
 AND DEFENDANT QUARLES &
 BRADY, LLP**

22 This stipulation of settlement dated June 4, 2012 (“Stipulation”) is submitted
 23 pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of
 24 the District Court, this Stipulation is entered into by Class Representatives-Lead Plaintiffs
 25 Robert Facciola, the Robert Maurice Facciola Trust Dated December 2, 1994, Honeylou
 26 C. Reznik, The Morris Reznik and Honeylou C. Reznik Trust, Jewel Box Loan Company,
 27 Inc., Jewel Box, Inc., H-M Investments LLC, Judith A. Baker and the Fred C. Hagel and
 28 Jacqueline M. Hagel Revocable Living Trust Dated March 15, 1995 (collectively, “Lead

1 (b) certifying a class (“the RB Litigation Class”) of certain persons who purchased
2 investments sold by Radical Bunny, LLC. The District Court also appointed Tiffany &
3 Bosco PA as class counsel for the ML Litigation Class (“ML Class Counsel”) and
4 Bonnett, Fairbourn, Friedman & Balint, P.C. as class counsel for the RB Litigation Class
5 (“RB Class Counsel”). The ML Litigation Class and the RB Litigation Class are
6 collectively referred to herein as the “Litigation Classes”; ML Class Counsel and RB
7 Class Counsel are collectively referred to herein as “Class Counsel.”

8 E. Discovery in the Facciola Litigation, which included the exchange of
9 millions of pages of documents and the depositions of twenty-eight fact witnesses and
10 fourteen expert witnesses, closed on March 13, 2012, and dispositive motions were filed
11 on April 13, 2012.

12 F. Lead Plaintiffs through Class Counsel have thoroughly investigated the
13 allegations of wrongdoing asserted in the First Amended Complaint and with the help of
14 expert witnesses have closely analyzed (a) the alleged damages suffered by the Litigation
15 Classes, and (b) the “self-consuming” insurance coverage available to Quarles. Lead
16 Plaintiffs and Class Counsel have scrutinized the facts and the applicable law with respect
17 to the claims alleged against Quarles and the potential defenses thereto, which in Class
18 Counsel’s judgment has provided an adequate and fully informed basis for the Settlement
19 described in this Stipulation.

20 Settlement Negotiations

21 G. The Parties engaged in an extensive mediation process using an experienced
22 and well-respected private mediator, Lawrence H. Fleischman, and they have conducted
23 discussions and arm’s length negotiations with each other with respect to a compromise
24 and settlement of the claims asserted against Quarles in the Facciola Litigation.

25 Quarles’ Denials of Wrongdoing and Liability

26 H. Quarles has denied, and continues to deny, each and every claim and
27 contention alleged against it by Lead Plaintiffs in the Facciola Litigation. Quarles has
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1 expressly denied, and continues to deny, all charges of wrongdoing or liability against it
2 arising out of any of the conduct, statements, acts or omissions alleged, or that could have
3 been alleged, in the Facciola Litigation. Quarles also has expressly denied, and continues
4 to deny, that class certification would be appropriate if the case were litigated rather than
5 settled.

6 I. Nonetheless, Quarles has concluded that further conduct of the Facciola
7 Litigation would be protracted and expensive, and that it is desirable that the Facciola
8 Litigation be fully and finally settled in the manner and upon the terms and conditions set
9 forth in this Stipulation, solely for the purpose of avoiding the burden, expense, risk and
10 uncertainty of continuing the proceedings. Quarles has thus determined that it is desirable
11 and beneficial to it that the Facciola Litigation be settled in the manner and upon the terms
12 and conditions set forth in this Stipulation without acknowledging any wrongdoing, fault,
13 liability or damage to the Lead Plaintiffs or any other member of the Litigation Classes or
14 proposed Settlement Classes (as defined below), and while maintaining the merit of the
15 defenses Quarles asserted to the claims alleged.

16 **Benefits of the Settlement to the Classes**

17 J. Lead Plaintiffs and Class Counsel believe that the Settlement provides fair,
18 reasonable and adequate monetary recovery for the Settlement Classes (as defined below)
19 based on the claims asserted, the evidence developed and the damages that might be
20 proven by the Lead Plaintiffs and the Litigation Classes in the Facciola Litigation and the
21 amount of insurance coverage available to Quarles.

22 K. Lead Plaintiffs and Class Counsel further recognize and acknowledge the
23 expense and length of continued proceedings necessary to prosecute the Facciola
24 Litigation through trial and appeal. Lead Plaintiffs and Class Counsel also have
25 considered the uncertain outcome and the risk of any litigation, including the risk that the
26 Litigation Classes might recover nothing, especially in a complex action such as this one,
27 as well as the difficulties and delays inherent in any such litigation. Lead Plaintiffs and
28

1 Class Counsel are also mindful of the inherent problems of proof and possible defenses to
2 the Facciola Litigation and to the securities law violations asserted against Quarles and
3 therefore believe that it is desirable that the Released Claims (as defined below) be fully
4 and finally compromised, settled and resolved as set forth herein. Lead Plaintiffs and
5 Class Counsel have also considered that there are several potential coverage defenses and
6 exclusions that may be applicable to Quarles' insurance coverage otherwise available for
7 the claims asserted in the Facciola Litigation, which could materially affect the potential
8 collectability of any judgment entered in the Facciola Litigation. Based upon their
9 evaluation, Lead Plaintiffs and Class Counsel have determined that the Settlement set
10 forth in this Stipulation is fair, reasonable and adequate and in the best interests of Lead
11 Plaintiffs and the Litigation Classes.

12 **NOW THEREFORE**, without any admission or concession on the part of Lead
13 Plaintiffs or Class Counsel regarding any lack of merit of the Facciola Litigation, and
14 without any admission or concession of any liability or wrongdoing or lack of merit in the
15 defenses whatsoever by Quarles, it is hereby **STIPULATED AND AGREED**, by and
16 among the Parties to this Stipulation, through their respective attorneys, in consideration
17 of the benefits flowing to the Parties hereto from the Settlement and subject to
18 (1) approval of the District Court pursuant to Rule 23(e) of the Federal Rules of Civil
19 Procedure and (2) the other conditions set forth herein, that the claims asserted by Lead
20 Plaintiffs and the Litigation Classes in the Facciola Litigation and all Released Claims (as
21 defined below) as against the Released Parties (as defined below) will be finally and fully
22 compromised, settled, released and dismissed, on the merits and with prejudice, in the
23 manner and upon and subject to the terms and conditions set forth herein.

24 **Certain Definitions**

25 1. In addition to the definitions set forth above, the following capitalized terms
26 used in this Settlement Stipulation will have the meanings specified below:

27 a. "District Court" means the United States District Court for the
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1 District of Arizona.

2 b. “Effective date” means the first day following the date on which the
3 Settlement contemplated by this Stipulation will become effective as set forth in ¶ 36
4 below.

5 c. “Escrow Account” means the interest-bearing account established
6 pursuant to ¶¶ 7&8 herein.

7 d. “Escrow Agent” will mean Rust Consulting, Inc. or its designate.

8 e. “Final Approval” means the expiration of the time for appeal or
9 review of the Judgment (defined below) by the District Court in the Facciola Litigation
10 approving (i) the Settlement and (ii) the release of the Released Claims as to the Released
11 Parties as fair, adequate and reasonable, and dismissing the claims of the Lead Plaintiffs
12 and the Settlement Classes against Quarles, with prejudice; or, if a motion to alter or
13 amend the Judgment under Federal Rule of Civil Procedure 59(e) is filed or if any appeal
14 is taken, immediately after the determination of that motion or appeal so that it is no
15 longer subject to review upon appeal or review by certiorari or otherwise, and the time for
16 any petition for reargument, appeal or review, by certiorari or otherwise, has expired; or,
17 in the event that the District Court enters Judgment in a form other than that attached
18 hereto as Exhibit C (“Alternative Judgment”) and none of the Parties hereto elect to
19 terminate this Settlement, the date that such Alternative Judgment becomes final and no
20 longer subject to appeal or review by certiorari or otherwise, and the time for any petition
21 for reargument, appeal or review, by certiorari or otherwise, has expired.

22 f. “Final Approval Hearing” means the final hearing to be held by the
23 District Court to determine: (1) whether the proposed Settlement should be approved as
24 fair, reasonable and adequate; (2) whether all Released Claims should be dismissed with
25 prejudice; (3) whether an order approving the Settlement should be entered; and
26 (4) whether the Plan of Allocation of the Settlement Fund should be approved.

27 g. “Judgment” means the final judgment and order, substantially in the
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1 form attached hereto as Exhibit C, or such other substantially similar form agreed to by
2 the Parties, to be entered finally approving the Settlement and dismissing the Facciola
3 Litigation against the Released Parties on the merits with prejudice.

4 h. "Mailed Notice" means the "Notice of Proposed Settlement of Class
5 Action and Final Approval Hearing" substantially in the form attached hereto as Exhibit
6 B.

7 i. "Mortgages Ltd." or "ML" means Mortgages Ltd., and "Mortgages
8 Ltd. Securities" means Mortgages Ltd. Securities, L.L.C.

9 j. "Net Settlement Fund" will have the meaning set forth in ¶ 9 herein.

10 k. "Notice and Administration Costs" means the costs, fees and
11 expenses that are incurred by the Claims Administrator and Lead Plaintiffs' Counsel in
12 connection with (i) providing notice to the Classes; and (ii) administering the Claims
13 process as well as the costs, fees and expenses incurred in connection with the Escrow
14 Account, provided however, that the Notice and Administration Costs will not include any
15 litigation expenses or any attorneys' fees awarded by the Court.

16 l. "Person" and "Persons" means any individual, corporation,
17 partnership, limited liability partnership, limited liability company, association, affiliate,
18 joint stock company, estate, trust, trustee, unincorporated association, entity, government
19 and any political subdivision thereof, or any other type of business or legal entity, any
20 legal representative, and their spouses, heirs, predecessors, successors, representatives,
21 agents, members, managers, or assignees.

22 m. "Plan of Allocation" means the separate plan for allocating the Net
23 Settlement Fund to Settlement Classes Members after payment of the Notice and
24 Administration Costs, Taxes and Tax Expenses and such attorneys' fees, costs and
25 expenses as may be approved by the District Court. The Plan of Allocation is not part of
26 the Stipulation, and Quarles and the other Released Parties will have no liability with
27 respect thereto.
28

1 n. "Preliminary Approval Order" means the Proposed Order
2 Preliminarily Approving Settlement and Providing for Notice that Lead RB Plaintiffs and
3 Quarles will seek from the District Court, substantially in the form attached as Exhibit A.

4 o. "Quarles's Counsel" will mean the law firms of Morgan, Lewis &
5 Bockius LLP and Steptoe & Johnson, LLP.

6 p. "Radical Bunny" or "RB" means Radical Bunny, LLC.

7 q. "RB Liquidation" means RB Liquidation, LLC, a successor to
8 Radical Bunny, LLC.

9 r. "Released Claims" means any and all claims, debts, demands, rights,
10 liabilities and causes of action, of every nature and description, known or Unknown (as
11 defined in ¶ 1bb), whether based on federal, state, local or foreign statutory law or
12 common law, rule or regulation, whether fixed or contingent, foreseen or unforeseen,
13 matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct,
14 representative, class or individual in nature, including, but not limited to, any and all
15 claims that Lead Plaintiffs or any Settlement Classes Member has asserted against Quarles
16 in the Facciola Litigation, or could have asserted against Quarles in the Facciola
17 Litigation, or in any forum, that arise out of, are based upon or are related to the
18 allegations, transactions, facts, matters or occurrences, representations or omissions
19 involved, set forth, or referred to in the First Amended Complaint or that arise out of, are
20 based upon or are related to (i) investments in Mortgages Ltd. (or the limited liability
21 companies it managed) or Radical Bunny, (ii) the purchase or other acquisition of interests
22 in deeds of trust issued to Mortgages Ltd., (iii) the purchase of investments, securities or
23 beneficial interests in securities from or issued by Mortgages Ltd. (or the limited liability
24 companies it managed), Mortgages Ltd. Securities or Radical Bunny, (iv) the purchase or
25 other acquisition of interests in loans by Radical Bunny to Mortgages Ltd., or (v) the
26 representation of Radical Bunny by Quarles; provided, however, that nothing contained in
27 this definition of Released Claims will release, discharge or impair any rights or claims
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1 that Lead Plaintiffs or any Settlement Classes Member may have as a creditor under the
2 plans of reorganization approved in the ML or RB bankruptcy proceedings, except as
3 against any of the Released Parties.

4 s. "Released Parties" means Quarles and its current, former, or future
5 parents, subsidiaries, affiliates, partners, of counsel, associates, joint venturers, officers,
6 directors, principals, shareholders, members, member entities, predecessors, successors,
7 employees, attorneys, accountants, advisors, insurers, reinsurers, agents (acting in their
8 capacity as agents), servants, administrators, executors, representatives, trustees, vendors,
9 and assigns, and any other individual or entity which is related to or affiliated with
10 Quarles or its current, former, and future legal representatives, successors in interest or
11 assigns, individually, jointly and severally. "Released Parties" specifically does not
12 include Greenberg Traurig, LLP, Mayer Hoffmann McCann, P.C., CBIZ, Inc., CBIZ
13 MHM, LLC or any other named defendant in the Facciola Litigation.

14 t. "Settlement" means the collective settlement terms set forth in this
15 Stipulation.

16 u. "Settlement Administrator" means Rust Consulting, Inc., the firm
17 which Class Counsel requests be appointed by the District Court to administer the
18 Settlement and disseminate notice of the pendency of the Facciola Litigation and the
19 proposed Settlement to those persons who fall within the Settlement Classes, provided
20 that Class Counsel may in its discretion perform such services in lieu of the Settlement
21 Administrator.

22 v. "Settlement Classes" means, collectively:

- 23 1. all Persons who, during the Settlement Classes Period,
24 (a) invested or held investments in Radical Bunny; (b) purchased (or
25 held) through Radical Bunny interests in loans by Radical Bunny to
26 Mortgages Ltd.; (c) purchased (or held) through Radical Bunny
27 interests in deeds of trust issued to Mortgages Ltd.; or (d) purchased
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or held investments, securities, or beneficial interests in securities from or issued by Radical Bunny (“the RB Settlement Class”); and

2. all Persons who, during the Settlement Classes Period, (a) invested or held investments in Mortgages Ltd. (or the limited liability companies it managed); (b) purchased, acquired, or held interests in deeds of trust issued to Mortgages Ltd.; or (c) purchased or held investments, securities, or beneficial interests in securities from or issued by Mortgages Ltd. (or the limited liability companies it managed) or Mortgages Ltd. Securities (“the ML Settlement Class”).

Excluded from the definition of “Settlement Classes” in the foregoing (1) and (2) are all of the following:

- (i) Mortgages Ltd., Mortgages Ltd. Securities, Radical Bunny, and each of their officers, directors, managers, owners, shareholders, employees, affiliates, agents, legal representatives, predecessors, successors, and assigns;
- (ii) Scott Coles, Ashley Coles, and their children, heirs, family trusts, and estates;
- (iii) the entities named at any time as defendants in the Facciola Litigation (Greenberg Traurig, LLP, Quarles & Brady LLP, CBIZ, Inc., CBIZ MHM, LLC, and Mayer Hoffman McCann, P.C.);
- (iv) the individuals named at any time as defendants in the Facciola Litigation (Michael M. Denning, Donna J. Denning, Todd S. Brown, Cynthia D. Brown, Christopher J. Olson, Rachel L. Schwartz-Olson, Jeffrey A. Newman, Kathleen N. Newman, Tom Hirsch, Diane Rose Hirsch, Howard E. Walder, Berta F. Walder, Harish P. Shah, and Madhavi H. Shah), and each of their spouses, family trusts, and estates; and
- (v) all Persons who are presently named as plaintiffs or who have purported to assign claims to Person(s) named as plaintiffs in the following

1 three separate actions in which claims have threatened to be asserted against Quarles
2 and/or are subject to tolling agreements with Quarles: (1) *Roger Ashkenazi, et al. v.*
3 *Greenberg Traurig LLP, et al.*, No. CV2010-020851 (Ariz. Super. Ct.), (2) *Mary Marsh,*
4 *et al. v. Greenberg Traurig LLP, et al.*, No. CV2010-097769 (Ariz. Super. Ct.), and
5 (3) *Victims Recovery, LLC v. Greenberg Traurig LLP, et al.*, No CV2010-052188 (Ariz.
6 Super. Ct.).

7 w. "Settlement Classes Members" means Persons (a) who fall within the
8 definition of the Settlement Classes in ¶ 1v and (b) who do not timely and properly
9 request to be excluded from the Settlement Classes.

10 x. "Settlement Classes Period" will mean the time from September 1,
11 2005 through June 3, 2008.

12 y. "Settlement Fund" means the gross amount of \$26,505,600.00
13 million that Quarles is obligated to pay in accordance with ¶7, plus the Westchester D&O
14 Insurance Proceeds Lead Plaintiffs are obligated to pay in accordance with ¶ 8.

15 z. "Taxes" means any taxes due and payable with respect to the income
16 earned by the Settlement Fund, including any interest or penalties thereon.

17 aa. "Tax Expenses" means any expenses and costs incurred in
18 connection with the payment of Taxes (including, without limitation, expenses of tax
19 attorneys and/or accountants and expenses relating to the filing or failure to file all
20 necessary or advisable tax returns).

21 bb. "Unknown Claims" means any and all Released Claims that Lead
22 Plaintiffs or any Settlement Classes Member does not know or suspect to exist in his, her
23 or its favor at the time of the release of the Released Parties. With respect to any and all
24 Released Claims, the Parties stipulate and agree that upon the Effective Date, Lead
25 Plaintiffs will expressly, and each Settlement Classes Member will be deemed to have,
26 and by operation of the Judgment will have expressly, waived any and all provisions,
27 rights and benefits conferred by any law of any state or territory of the United States, or
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1 principle of common law or foreign law, which is similar, comparable or equivalent to
2 Cal. Civ. Code § 1542, which provides:

3
4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
5 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
6 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
7 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
8 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

9 Lead Plaintiffs and Quarles acknowledge, and Settlement Classes Members by operation
10 of law will be deemed to have acknowledged, that the inclusion of “Unknown Claims” in
11 the definition of Released Claims was separately bargained for and was a key element of
12 the Settlement.

13 cc. “Westchester D&O Insurance Proceeds” means the pre-certification
14 sums recovered by Lead Plaintiffs from Mortgages Ltd.’s D&O insurance carrier in the
15 amount of \$1,423,948.47, currently held in escrow by Class Counsel.

16 MUTUAL RELEASE OF CLAIMS

17 2. The obligations incurred pursuant to this Stipulation will be in full and final
18 disposition of the Facciola Litigation as against the Released Parties and will fully, finally
19 and forever compromise, settle, release, resolve, relinquish, waive, discharge and dismiss,
20 on the merits and with prejudice, the Facciola Litigation and any and all Released Claims
21 against the Released Parties.

22 3. Pursuant to the Judgment, without further action by anyone, upon the
23 Effective Date of this Settlement, Lead Plaintiffs will have, and each of the Settlement
24 Classes Members will be deemed to have, and by operation of law and of the Judgment
25 will have, on behalf of themselves, their current and former spouses, heirs, joint tenants,
26 tenants in common, beneficiaries, executors and administrators, past and present
27 successors, predecessors, parents, subsidiaries, affiliates, officers, directors, shareholders,
28 employees, members, managers, trustees, agents, representatives, attorneys, insurers and
assigns, and any person they represent or that acts by, through, under, or in concert with

1 substantially in the form annexed hereto as Exhibit C which will, among other things,
2 contain terms providing for a Bar Order substantially in the form set forth below,
3 including:

4 (a) A contribution bar order in accordance with A.R.S. § 44-2003(K)
5 barring and extinguishing any and all claims in any jurisdiction for contribution
6 based upon, arising out of, or related to any Released Claim, including, but not
7 limited to, any claim that is based upon, arises out of, or relates to the Facciola
8 Litigation, or the transactions and occurrences referred to in the First Amended
9 Complaint, or in any counterclaims or third-party claims by any (i) person or entity
10 against the Released Parties, or any of them, and (ii) the Released Parties against
11 any person or entity, other than as set forth in A.R.S. § 44-2003(K)(2); provided,
12 however, that, if the Lead Plaintiffs, or any of them, obtain any judgment against
13 any such person or entity based upon, arising out of, or relating to Released Claims
14 covered by A.R.S. § 44-2003(K), that person or entity will be entitled to a
15 judgment credit, in accordance with A.R.S. § 44-2003(K), equal to the greater of (i)
16 an amount that corresponds to the percentage of responsibility of the Released
17 Parties for the damages to the Lead Plaintiffs on account of the Released Claims, or
18 (ii) the Settlement Amount.

19 (b) A complete bar order permanently barring and enjoining any and all
20 Persons from commencing, prosecuting, or asserting any claim, cross-claim or
21 third-party claim in any state or federal jurisdiction against the Released Parties, or
22 any of them, arising under state, federal, or common law, however styled, whether
23 for indemnification or contribution or otherwise denominated (including, without
24 limitation, claims for breach of contract, negligence, professional liability, breach
25 of fiduciary duty, misrepresentation, conspiracy, unjust enrichment, or aiding and
26 abetting), where the claim constitutes, is based upon, arises out of or relates to a
27 Released Claim. The provisions of this complete bar order are intended to preclude
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1 any liability of the Released Parties to any Person for indemnification,
2 contribution, or otherwise on any claim in which a Person seeks to recover from
3 the Released Parties, or any of them (i) any amounts such Person is liable, or may
4 become liable, to pay to the Lead Plaintiffs; and/or (ii) any costs, expenses, or
5 attorneys' fees from defending any claim(s) asserted by the Lead Plaintiffs;
6 provided, however, that if the Lead Plaintiffs obtain any judgment against any such
7 Person based upon, arising out of, or relating to any Released Claim, that Person
8 will be entitled to a judgment credit equal to the *greater* of (i) an amount that
9 corresponds to the percentage of responsibility of the Released Parties for the
10 damages to the Lead Plaintiffs on account of the Released Claims; and (ii) the
11 Settlement Amount.

12 (c) Except as provided in ¶ 6d below, a complete bar order permanently
13 barring and enjoining the Released Parties from commencing, prosecuting, or
14 asserting any claim, cross-claim or third-party complaint claim in any state or
15 federal jurisdiction against any and all Persons arising under state, federal, or
16 common law, however styled, whether for indemnification or contribution or
17 otherwise denominated (including, without limitation, claims for breach of
18 contract, negligence, professional liability, breach of fiduciary duty,
19 misrepresentation, conspiracy, unjust enrichment, or aiding and abetting), where
20 the claim constitutes, is based upon, arises out of or relates to a Released Claim.
21 The provisions of this complete bar order are intended to preclude any liability by
22 any Person to the Released Parties for indemnification, contribution, or otherwise
23 on any claim in which the Released Parties, or any of them, seek to recover from
24 any Person (i) any amounts the Released Parties are liable, or may become liable,
25 to pay to the Lead Plaintiffs; and/or (ii) any costs, expenses, or attorneys' fees from
26 defending any claim(s) asserted by the Lead Plaintiffs.

27 (d) Nothing in this Bar Order will prevent a putative Settlement Classes
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1 Member who timely and validly requested an exclusion from the Settlement
2 Classes from pursuing any Released Claim against any Released Party. If any
3 putative Settlement Classes Member who validly requests exclusion from the
4 Settlement Classes pursues any such Released Claim against any Released Party,
5 nothing in the Bar Order or in this Stipulation will operate to preclude such
6 Released Party from asserting any claim of any kind against such putative
7 Settlement Classes Member (or seeking contribution or indemnity from any
8 Person, including any former or current co-defendant in the Facciola Litigation, in
9 respect of the claim of such putative Settlement Classes Member who validly
10 requests exclusion from the Settlement Classes).

11 (e) Notwithstanding anything to the contrary in the Bar Order and this
12 Stipulation, in the event that any Person (for purposes of this paragraph, a
13 "petitioner") commences against any of the Released Parties any action asserting a
14 claim that is based upon, arises out of, or relates to any Released Claim belonging
15 to the Settlement Classes or a Settlement Classes Member and such claim is not
16 barred by a court pursuant to ¶ 6 or is not otherwise barred by the Bar Order, the
17 Bar Order will not bar claims by that Released Party against (i) such petitioner;
18 (ii) any Person who is or was controlled by, controlling or under common control
19 with the petitioner, or whose assets or estate are or were controlled, represented or
20 administered by the petitioner, or as to whose claims the petitioner has succeeded;
21 and (iii) any Person that participated with any of the Persons described in items
22 (i) and (ii) of this provision in connection with the conduct, transactions or
23 occurrences that are the subject of the claim brought against the Released Party(s).
24 Nothing in this paragraph will be deemed to create a claim or cause of action
25 against a petitioner or any other Person described in this paragraph.

26 If any provision of this Bar Order is subsequently held to be unenforceable, the Parties
27 will propose to the Court alternative terms so as to afford all of the Released Parties the
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1 fullest protection permitted by law and consistent with any concerns expressed by the
2 Court.

3 **THE SETTLEMENT CONSIDERATION**

4 7. In full and complete settlement of the Released Claims, Quarles will pay, or
5 cause to be paid, the following amounts (collectively, the "Settlement Amount"):
6 (a) \$100,000.00, no later than ten (10) business days following the date of the entry of the
7 Preliminary Approval Order into the Escrow Account established for the Settlement Fund,
8 for use by the Settlement Administrator or the Escrow Agent to pay the costs of providing
9 notice to the Settlement Classes Members and otherwise administering the Settlement on
10 behalf of the Settlement Classes; and (b) \$26,405,600.00 on or before thirty (30) calendar
11 days following the date of the entry of the Preliminary Approval Order into the Escrow
12 Account established for the Settlement Fund.

13 8. No later than ten (10) business days following the date of the entry of the
14 Preliminary Approval Order, Lead Plaintiffs will pay the Westchester D&O Insurance
15 Proceeds into the Escrow Account established for the Settlement Fund.

16 9. The Settlement Fund, net of any Taxes and Tax Expenses, will be used to
17 pay (1) the Notice and Administration Costs, (2) the approved attorneys' fees and
18 expenses referred to in ¶¶ 16-19, and (3) the remaining administration expenses referred
19 to in ¶¶ 9 & 11. The balance of the Settlement Fund after the above payments constitutes
20 the "Net Settlement Fund," which will be distributed to the Settlement Classes Members
21 as provided in the Plan of Allocation. All costs and expenses incurred by or on behalf of
22 the Lead Plaintiffs and the Settlement Classes associated with the Settlement and
23 approved by the District Court will be paid from the Settlement Fund; in no event will any
24 of the Released Parties bear any further or additional responsibility for any such costs or
25 expenses beyond payment of the Settlement Amount.

26 10. All funds held by the Escrow Agent will be deemed to be in the custody of
27 the District Court and such funds will remain subject to the jurisdiction of the District
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1 Court until such time as the funds will be distributed to the Settlement Classes Members
2 or returned to Quarles pursuant to this Stipulation and/or further order of the District
3 Court. The Escrow Agent will hold the funds in an interest-bearing bank account insured
4 by the FDIC and/or United States Agency or Treasury securities or obligations. Quarles
5 will not be liable for the loss of any portion of the Settlement Fund after payment into the
6 Escrow Account.

7 11. Upon written agreement of the Parties, or by order of the District Court,
8 additional amounts may be transferred from the Settlement Fund to the Notice and
9 Administration Fund. The Escrow Agent will not disburse funds from the Notice and
10 Administration Fund except as provided in this Stipulation, by an order of the District
11 Court, or with the written agreement of counsel for all Parties.

12 12. Upon the payment of the Settlement Fund, the Parties agree to treat the
13 Settlement Fund as a Qualified Settlement Fund within the meaning of Treasury
14 Regulation § 1.468B-1 and the Settlement Administrator will be responsible for timely
15 making such elections as are necessary or advisable to carry out the provisions of this
16 paragraph, including but not limited to the relation-back election (as defined in Treasury
17 Reg. § 1.468B-1) to the earliest permitted date. Such elections will comply with the
18 procedures and requirements contained in such Regulations. Additionally, it will be the
19 responsibility of the Settlement Administrator to prepare and deliver the necessary
20 documentation for signature by all necessary Parties, and thereafter to cause the
21 appropriate filing(s) to occur. The Settlement Administrator and Class Counsel, as
22 required, will do all things that are necessary or advisable to carry out the provisions of
23 this paragraph and Quarles will reasonably cooperate with the Settlement Administrator
24 and Class Counsel to carry out the provisions of this paragraph.

25 13. All Taxes (including any interest or penalties) arising with respect to the
26 income earned by the Settlement Fund after payment into the Escrow Account, including
27 any Taxes or Tax detriments that may be imposed upon Quarles with respect to any
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1 income earned by the Settlement Fund for any period during which the Settlement Fund
2 does not qualify as a “qualified settlement fund” (limited by the amount of simple interest
3 earned on the Settlement Fund at the LIBOR and not any higher interest rate that Quarles
4 may earn on the Settlement Fund) for Federal or state income tax purposes and all Tax
5 Expenses will be considered to be a cost of administration of the Settlement and will be
6 paid out of the Settlement Fund. The Released Parties will not have any liability or
7 responsibility for any such Taxes or Tax Expenses. The Settlement Administrator will
8 indemnify and hold each of the Released Parties harmless for any liability or obligation
9 whatsoever relating to the administration of the Settlement Fund, the distribution of the
10 Net Settlement Fund or implementation of the Plan of Allocation. The Settlement
11 Administrator, or its agents, will timely and properly file all informational and other tax
12 returns necessary or advisable with respect to the Settlement Fund and the distributions
13 and payments therefrom, including, without limitation, the tax returns described in Treas.
14 Reg. § 1.468B-2(k), and to the extent applicable, Treas. Reg. § 1.468B-2(l). Such returns
15 will be consistent with the terms hereof and in all events will reflect that all such Taxes,
16 including any interest or penalties, on the income earned by the Settlement Fund will be
17 paid out of the Settlement Fund, subject to the limitations set forth in this paragraph. The
18 Settlement Administrator, or its agents, will also timely pay Taxes and Tax Expenses,
19 subject to the limitations set forth in this paragraph, out of the Settlement Fund, and are
20 authorized to withdraw, without prior order of the District Court, from the Settlement
21 Fund amounts necessary to pay Taxes and Tax Expenses. The Parties hereto agree to
22 cooperate with the Settlement Administrator, each other, and their tax attorneys and
23 accountants to the extent reasonably necessary to carry out the provisions of this
24 Stipulation.

25 14. This is not a claims-made settlement. As of the Effective Date, Quarles will
26 have no right to the return of the Settlement Fund or any portion thereof. Any
27 undistributed money from the Settlement Fund that cannot be distributed cost effectively
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1 to the Settlement Classes Members will be donated to one or more non-sectarian, not-for-
2 profit 501(c)(3) organization(s) designated by Lead Plaintiffs and approved by the District
3 Court.

4 15. The finality of the Settlement will not be conditioned on any ruling by the
5 District Court concerning the Plan of Allocation or the approval of attorneys' fees and
6 expenses to Class Counsel or counsel for RB Liquidation. Any order or proceeding
7 relating to a request for approval of the Plan of Allocation, or of attorneys' fees and
8 expenses or any appeal from any order relating thereto or reversal or modification thereof,
9 will not operate to delay or terminate the Settlement or affect or delay the Effective Date
10 or the effectiveness or finality of the Order and Final Judgment and the release of the
11 Released Claims. There will be no distribution of any of the Net Settlement Fund to any
12 Class Member until the Plan of Allocation is finally approved and such order of approval
13 is affirmed on appeal and/or is no longer subject to review by appeal or certiorari, and the
14 time for any petition for rehearing, appeal, or review, by certiorari or otherwise, has
15 expired.

16 **ATTORNEYS' FEES AND EXPENSES**

17 16. Class Counsel will apply to the District Court for attorneys' fees in the
18 amount of 15% of the Settlement Fund, plus reimbursement of unreimbursed litigation
19 expenses. Counsel for RB Liquidation will apply to the District Court for attorneys' fees
20 and expenses in the amount of \$704,000.00. Such amounts as are approved by the District
21 Court will be payable from the Settlement Fund pursuant to ¶¶ 9 & 21.

22 17. Quarles and the other Released Parties will have no responsibility or
23 liability for, and will take no position with respect to, any application for attorneys' fees
24 or expenses, or the allocation of fees and expenses that the District Court may approve in
25 this action. In addition, Quarles will take no position as to the proposed Plan of
26 Allocation for the Settlement Fund.

27 18. The procedure for and amounts of attorneys' fees and expenses, and the
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1 allowance or disallowance by the District Court thereof, are not a condition of the
2 Settlement. Class Counsel and counsel for RB Liquidation will request that their
3 application for attorneys' fees and expenses be considered by the District Court at the
4 Final Approval Hearing separately from the District Court's consideration of the fairness
5 and adequacy of the Settlement. Any order or proceedings relating to such request, or any
6 appeal from any order relating thereto or reversal or modification thereof, will not operate
7 to delay or terminate the Settlement or affect or delay the Effective Date or the
8 effectiveness or finality of the Order and Final Judgment and the release of the Released
9 Claims. The finality of the Settlement will not be conditioned on any ruling by the
10 District Court concerning any application for attorneys' fees and expenses.

11 19. Except as otherwise provided in this paragraph, the attorneys' fees and
12 expenses approved by the District Court will be paid from the Settlement Fund within five
13 (5) business days of the date the District Court enters an order approving such fees and
14 expenses. In the event that the Effective Date does not occur, or the Judgment is reversed
15 or modified in any way that affects attorney fees and expenses, or the Settlement
16 Stipulation is terminated for any other reason, then each counsel receiving fees or
17 expenses under this provision will, within ten (10) business days from receiving notice
18 from Quarles's Counsel or from a court of appropriate jurisdiction, refund to the
19 Settlement Fund either the full amount of the fees and expenses previously received by it
20 pursuant to these provisions (in the event the Judgment is reversed) or an amount
21 consistent with any modification of the Judgment with respect to attorneys' fees and
22 expenses. Class Counsel and counsel for RB Liquidation agree that they and their
23 shareholders are subject to jurisdiction of the District Court for the purpose of enforcing
24 the provisions of this paragraph.

25 **DISTRIBUTION TO SETTLEMENT CLASSES MEMBERS**
26 **AND ADMINISTRATION OF SETTLEMENT**

27 20. Class Counsel or the Settlement Administrator, subject to the approval of
28 the District Court, will oversee implementation of the Plan of Allocation and distribution

1 of the Settlement Fund and perform all calculations, determinations and claims
2 administration procedures necessary or appropriate in connection therewith.

3 21. The Settlement Fund will be applied as follows:

- 4 i. To pay all Notice and Administration Costs incurred;
5 ii. To pay Taxes and Tax Expenses owed by the Settlement Fund;
6 iii. Subject to the approval and further order(s) of the District Court, for
7 payment of all attorneys' fees and expense reimbursement as may be
8 approved by the District Court to Class Counsel and counsel for RB
9 Liquidation;
10 iv. Subject to the approval and further order(s) of the District Court, and
11 upon the Effective Date, to distribute the Net Settlement Fund to the
12 Settlement Classes Members pursuant to the Plan of Allocation.

13 22. Each Settlement Classes Member will be deemed to have submitted to the
14 jurisdiction of the District Court with respect to his, her or its share of the Net Settlement
15 Fund. All determinations and distributions of the Net Settlement Fund by the Settlement
16 Administrator in accordance with the Plan of Allocation are final, binding and non-
17 appealable.

18 23. Regardless of the amount of the distribution received from the Settlement
19 Fund, if any, each Settlement Classes Member will remain bound by all of the terms of
20 this Stipulation, including the terms of the Judgment, if applicable, to be entered in the
21 Facciola Litigation and the applicable Releases provided for herein, and will be
22 permanently barred and enjoined from bringing any action, claim, or other proceeding of
23 any kind against the Released Parties asserting any Released Claims in the event that the
24 Effective Date occurs.

25 24. Neither Quarles nor any other Released Party will have any liability,
26 obligation or responsibility whatsoever for the administration of either of the Settlement
27 Fund or disbursement of the Net Settlement Fund.

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1 25. No Settlement Classes Member will have any claim against Class Counsel,
2 Lead Plaintiffs, any of the Released Parties or their counsel, the Escrow Agent, the
3 Settlement Administrator or any employees or agents of any of the foregoing, based on
4 the distributions made substantially in accordance with this Stipulation or as otherwise
5 approved or directed by the District Court. Payment pursuant to this Stipulation will be
6 deemed final and conclusive against all Settlement Classes Members.

7 26. All proceedings with respect to the administration, processing and
8 distribution of the Settlement Fund, the determination of the amounts due to Settlement
9 Classes Members under the Plan of Allocation and the determination of all controversies
10 relating thereto, are subject to the jurisdiction of the District Court.

11 27. The Net Settlement Fund will not be distributed by the Settlement
12 Administrator until after the Effective Date.

13 28. Following distribution of the Net Settlement Fund, the Settlement
14 Administrator will maintain its records for three years after the Effective Date.

15 **REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASSES**

16 29. Each member of the Settlement Classes will be bound by all determinations
17 and judgments in the Facciola Litigation concerning the Settlement unless such person
18 sends to the Settlement Administrator, by first class mail or email, a written request for
19 exclusion from the relevant Settlement Class(es). In order to be valid, the request for
20 exclusion must (1) be postmarked or emailed within 45 days of mailed notice by the
21 Settlement Administrator, and (2) state all of the following: (a) the name, address and
22 telephone number of the person requesting exclusion; (b) the identity of the Mortgages
23 Ltd. and/or Radical Bunny investments purchased (or otherwise acquired); (c) the face
24 value of the investment still held as of June 3, 2008; (d) the price or other consideration
25 paid for such investments; (e) the date of each purchase; and (f) a clear and unequivocal
26 statement that the person wishes to be excluded from the relevant Settlement Class(es).
27 The failure of any Settlement Classes Member to provide complete or accurate
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1 information called for by sub-paragraphs 2(b) or 2(d)-(e) will not invalidate the Request
2 for Exclusion. All persons who submit valid and timely Requests for Exclusion in the
3 manner set forth in this paragraph will have no rights under this Stipulation, will not share
4 in the distribution of the Net Settlement Fund, and will not be bound by the Stipulation or
5 the Judgment.

6 30. The Settlement Administrator will scan and email copies of each Request
7 for Exclusion in PDF format (or such other format as may be agreed) to Quarles's
8 Counsel and to Class Counsel expeditiously (and not more than five (5) business days)
9 after the Settlement Administrator receives such a request. As part of the motion papers
10 in support of the Settlement of the Action, the Settlement Administrator or Class Counsel
11 will cause to be provided a list of all the persons who have requested exclusion from the
12 Settlement Classes, and will cause to be certified that all Requests for Exclusion received
13 by the Claims Administrator have been copied and provided to Quarles's Counsel no later
14 than fourteen (14) calendar days prior to the Final Approval Hearing.

15 **PRELIMINARY APPROVAL ORDER**

16 31. On or before June 4, 2012, Class Counsel will file the Stipulation and its
17 Exhibits with the District Court and will apply for entry of the Preliminary Approval
18 Order substantially in the form annexed hereto as Exhibit A.

19 **NOTICE UNDER CLASS ACTION FAIRNESS ACT OF 2005 ("CAFA NOTICE")**

20 32. Quarles's Counsel will send CAFA Notice in accordance with 28 U.S.C.
21 § 1715(a), not later than ten (10) days after the Stipulation and its Exhibits are filed with
22 the District Court.

23 33. On or before June 4, 2012, Class Counsel will provide Quarles's Counsel a
24 list of every state in which a putative Settlement Classes Member resides, so that Quarles
25 may send CAFA Notice in accordance with 28 U.S.C. § 1715(a).

26 **JUDGMENT**

27 34. If the Settlement contemplated by this Stipulation is approved by the
28 District Court, Class Counsel and Quarles's Counsel will jointly request that the District

1 Court enter a Judgment substantially in the form annexed hereto as Exhibit C.

2 **QUARLES'S OPTION TO TERMINATE SETTLEMENT**

3 35. Quarles has the option to terminate this Stipulation no fewer than 10 days
4 before the Final Approval Hearing if putative Settlement Classes Member(s) whose
5 investments exceed a specified aggregate amount, as determined by the face value of the
6 investment still held as of June 3, 2008, file valid and timely Requests for Exclusion, as
7 further set forth in a confidential "Supplemental Agreement" executed by the Parties
8 simultaneously herewith. The Supplemental Agreement will not be filed with the District
9 Court except that the substantive contents of the Supplemental Agreement may be brought
10 to the attention of the District Court, under seal, if so requested by the District Court, or if
11 a dispute arises among the Parties concerning the Supplemental Agreement's
12 interpretation or application. The Parties will keep the terms of the Supplemental
13 Agreement confidential, except if compelled by judicial process to disclose the
14 Supplemental Agreement. In the event the Settlement and this Stipulation are terminated
15 pursuant to this paragraph, this Stipulation will become null and void and of no further
16 force and effect, except that the provisions of ¶¶ 38 and 39 will survive termination.

17 **EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

18 36. The Effective Date of Settlement will be deemed to occur on the occurrence
19 or waiver, as applicable, of all of the following events:

- 20 i. entry of the Preliminary Approval Order;
- 21 ii. Quarles has not exercised its option to terminate its participation in
22 this Stipulation pursuant to the provisions of this Stipulation
23 (including the Supplemental Agreement);
- 24 iii. approval by the District Court of the Settlement and certification of
25 the Settlement Classes following class notice and a hearing in
26 accordance with Rule 23 of the Federal Rules of Civil Procedure and
27 entry of Judgment;
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- iv. the Judgment has reached Final Approval, as defined above; and
- v. payment by Lead Plaintiffs and Quarles of \$27,929,548.47 million into the Settlement Fund as set forth in ¶¶ 7 & 8.

37. Quarles or Lead Plaintiffs will have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to the other within seven (7) days of the date on which: (1) the District Court declines to enter the Preliminary Approval Order; (2) the District Court refuses to approve this Settlement or any material part of it, provided, however, that the allowance or disallowance by the Court of any application for attorneys’ fees and expenses will not be material; (3) the District Court declines to enter the Order and Final Judgment; (4) the Order and Final Judgment is vacated, modified or reversed in any material respect by the United States Court of Appeals for the Ninth Circuit or the United States Supreme Court; (5) an Alternative Judgment is vacated, modified or reversed in any material respect by the United States Court of Appeals for the Ninth Circuit or the United States Supreme Court; or (6) the Effective Date of Settlement otherwise does not occur, except that (i) if such Effective Date does not occur as a result of the failure of Quarles to pay the \$26,505,600.00 into the Settlement Fund as required by ¶ 7, Quarles may not terminate the Settlement, and (ii) if such Effective Date does not occur as a result of the failure of Lead Plaintiffs to pay the \$1,423,948.47 into the Settlement Fund as required by ¶ 8, Lead Plaintiffs may not terminate the Settlement. Neither a modification nor a reversal on appeal of any ruling on attorneys’ fees, costs and expenses by the Court to Class Counsel will be deemed a material modification of the Judgment or this Stipulation. Quarles may also terminate the Settlement and this Stipulation pursuant to ¶35. In the event the Settlement and this Stipulation are terminated, the provisions of ¶¶ 38 and 39 will survive termination.

38. In the event the Settlement and this Stipulation are terminated or if the Effective Date fails to occur for any reason, the Parties to this Stipulation will be deemed

1 litigation, or the deficiency of any defense that has been or could have been
2 asserted in the Facciola Litigation or in any litigation, or of any liability, fault
3 or wrongdoing of Quarles or other Released Parties; and

4 ii. may not be construed, offered or received against Lead Plaintiffs or the
5 Litigation Classes or any of them as evidence of, or construed as, or deemed
6 to be evidence of any presumption, concession or admission that any of their
7 claims are or were without merit or that damages recoverable under the First
8 Amended Complaint would not have exceeded the Settlement Fund.

9 41. This Settlement and Stipulation may be pleaded as a full and complete
10 defense by any of the Released Parties to any action, suit or other proceeding that may be
11 instituted, prosecuted or attempted with respect to any of the Released Claims. The
12 Released Parties may offer the Stipulation or Order and Final Judgment from the Facciola
13 Litigation in any other action that may be brought against them by any Settlement Classes
14 Member or any Person who may be subject to the Complete Bar Order in order to support
15 a defense or counterclaim based on principles of res judicata, collateral estoppel, release,
16 good faith settlement, judgment bar or reduction or any similar defense or counterclaim.

17 **MISCELLANEOUS PROVISIONS**

18 42. The headings herein are used for the purpose of convenience only and are
19 not meant to have legal effect.

20 43. All of the Exhibits attached hereto are hereby incorporated by reference as
21 though fully set forth herein. Notwithstanding the foregoing, in the event of a conflict or
22 inconsistency between the terms of this Stipulation and the terms of any exhibit hereto,
23 the terms of this Stipulation will prevail.

24 44. This Stipulation may not be modified or amended, nor may any of its
25 provisions be waived except by a writing signed by all Parties hereto or their successors-
26 in-interest.

27 45. The Parties to this Stipulation intend the Settlement to be a final and
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1 complete resolution of all disputes asserted or which could be asserted by the Lead
2 Plaintiffs and the Settlement Classes Members against any of the Released Parties with
3 respect to the Released Claims. Accordingly, the Judgment will contain a finding that at
4 all times each of the Parties and his, her, its, or their counsel has complied fully with Rule
5 11 of the Federal Rules of Civil Procedure in connection with the maintenance,
6 prosecution, defense and settlement of the Action. Lead Plaintiffs and Quarles further
7 agree not to make any public statements that contradict such position.

8 46. The Parties to this Settlement Stipulation agree that the amount paid and the
9 other terms of the Settlement were negotiated at arm's-length in good faith by the Parties,
10 and reflect a settlement that was reached voluntarily based upon adequate information and
11 after consultation with experienced legal counsel.

12 47. The waiver by one Party of any breach of this Stipulation by any other Party
13 will not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

14 48. This Stipulation, its exhibits and the Supplemental Agreement constitute the
15 entire agreement among these Parties with respect to the Settlement and supersede all
16 prior and/or contemporaneous arrangements, oral and/or written agreements and/or
17 discussions or negotiations between or among the Parties or their agents or attorneys
18 (including, without limitation, the Memorandum of Understanding entered into between
19 the Parties, among others, on May 10, 2012) with respect thereto. No promise,
20 representation or warranty by any Party, or attorney or agent of any Party, regarding the
21 Settlement that is not expressly contained or referred to in this Stipulation, its exhibits and
22 the Supplemental Agreement will be valid or binding on that Party. The Parties have
23 included this paragraph to preclude the introduction of parole evidence to vary, interpret,
24 supplement or contradict the terms of this Stipulation.

25 49. This Stipulation may be executed in one or more counterparts, including by
26 signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via
27 e-mail. All executed counterparts and each of them will be deemed to be one and the
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1 same instrument.

2 50. The Parties and their respective counsel agree that they will use their best
3 efforts to obtain all necessary approvals of the District Court required by this Settlement
4 and this Stipulation.

5 51. Each counsel signing this Stipulation represents that such counsel has
6 authority to sign this Stipulation on behalf of each of their respective clients.

7 52. This Settlement and Stipulation will be binding upon and will inure to the
8 benefit of the successors and assigns of the Parties hereto, including any and all Released
9 Parties and any corporation, partnership, or other entity into or with which any Party
10 hereto may merge, consolidate or reorganize. No assignment will relieve any Party hereto
11 of obligations hereunder.

12 53. Notices required by this Settlement Stipulation will be submitted both (1) by
13 email and (2) either by (a) any form of overnight mail or (b) in person to:

14
15 Andrew S. Friedman
16 BONNETT, FAIRBOURN, FRIEDMAN
17 & BALINT, P.C.
18 2901 N. Central Avenue, Suite 1000
19 Phoenix, AZ 85012
20 afriedman@bffb.com
*Attorneys for Judith A. Baker; the Fred C. Hagel and
Jacqueline M. Hagel Revocable Living Trust Dated
March 15, 1995; and the RB Litigation Class*

21 Richard G. Himelrick
22 TIFFANY & BOSCO, PA
23 Third Floor Camelback Esplanade II
24 2525 East Camelback Road
25 Phoenix, Arizona 85016-4237
26 RGH@tblaw.com
27 *Attorneys for Robert Facciola; The Robert Maurice
Facciola Trust Dated December 2, 1994; Honeylou C. Reznik;
The Morris Reznik and Honeylou C. Reznik Trust; Jewel Box
Loan Company, Inc.; Jewel Box, Inc.; H-M Investments, LLC; and
the ML Litigation Class*

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Dated: June 4, 2012

BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.

By /s/ Andrew S. Friedman
ANDREW S. FRIEDMAN
*Attorneys for Lead Plaintiffs Fred C.
Hagel and Jacqueline M. Hagel
Revocable Living Trust Dated March
15, 1995; Judith A. Baker*

Dated: June 4, 2012

TIFFANY & BOSCO, P.A.

By /s/ Richard G. Himelrick (with permission)
RICHARD G. HIMELRICK
*Attorneys for Lead Plaintiffs Robert
Facciola; The Robert Maurice Facciola
Trust Dated December 2, 1994;
Honeylou C. Reznik; The Morris Reznik
and Honeylou C. Reznik Trust;
Jewel Box Loan Company, Inc.; Jewel
Box, Inc.; H-M Investments, LLC*

Dated: June 4, 2012

MORGAN, LEWIS & BOCKIUS LLP

By /s/ Robert E. Gooding (with permission)
ROBERT E. GOODING
*Attorneys for Defendant
Quarles & Brady LLP*

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

s/ Nancy A. Serden

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EXHIBIT B

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Loan Company, Inc.; Jewel Box, Inc.; H-M Investments, LLC*

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

ROBERT FACCIOLA, et al.,
Plaintiffs,
vs.
GREENBERG TRAUIG, LLP, a New
York limited liability partnership, et al.,
Defendants.

Case No. 2:10-cv-01025-FJM

**STIPULATION OF SETTLEMENT
BETWEEN LEAD PLAINTIFFS
AND DEFENDANT GREENBERG
TRAURIG, LLP**

This stipulation of settlement dated June 20, 2012 ("Stipulation") is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of

1 the District Court, this Stipulation is entered into by Class Representatives-Lead Plaintiffs
2 Robert Facciola, the Robert Maurice Facciola Trust Dated December 2, 1994, Honeylou
3 C. Reznik, The Morris Reznik and Honeylou C. Reznik Trust, Jewel Box Loan Company,
4 Inc., Jewel Box, Inc., H-M Investments LLC, Judith A. Baker and the Fred C. Hagel and
5 Jacqueline M. Hagel Revocable Living Trust Dated March 15, 1995 (collectively, "Lead
6 Plaintiffs"), on behalf of themselves and the proposed Settlement Classes (defined below),
7 and by Defendant Greenberg Traurig, LLP ("Greenberg" and, together with Lead
8 Plaintiffs, the "Parties"), by and through their respective counsel.

9 This Stipulation is intended by the Parties to fully and finally compromise, resolve,
10 discharge, dismiss, and settle the Released Claims, as defined herein, subject to the terms
11 and conditions set forth below and final approval of the District Court. This Stipulation is
12 not made for the benefit of and does not affect Lead Plaintiffs' claims against any
13 defendant named in the above-captioned action other than Greenberg, including
14 specifically Quarles & Brady, LLP, Mayer Hoffmann McCann, P.C., CBIZ, Inc., or CBIZ
15 MHM, LLC.

16 **WHEREAS:**

17 A. On May 11, 2010, Lead Plaintiffs commenced the above-captioned action
18 against Greenberg and others styled *Facciola, et al., v. Greenberg Traurig, LLP, et al.*,
19 Case No. 2:10-cv-01025-FJM (the "Facciola Litigation") in the United States District
20 Court for the District of Arizona ("the District Court").

21 B. By Order dated August 10, 2010 (Dkt. # 55), the Court appointed Lead
22 Plaintiffs as the lead plaintiffs on behalf of putative classes of Mortgages Ltd. and Radical
23 Bunny investors in the Facciola Litigation and also appointed Tiffany & Bosco, PA as
24 counsel for the lead plaintiffs of the putative Mortgages Ltd. investor class and Bonnett,
25 Fairbourn, Friedman & Balint, P.C. as counsel for the lead plaintiffs of the putative
26 Radical Bunny investor class.

27 C. By Order dated November 18, 2011 (Dkt. # 289), the District Court granted
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1 in part Lead Plaintiffs' Motion for Leave to File a First Amended Complaint (Dkt. # 290)
2 ("the First Amended Complaint").

3 D. By Order dated March 19, 2012 (Dkt. # 346), the District Court granted
4 Lead Plaintiffs' motion for class certification, (a) certifying a class ("the ML Litigation
5 Class") of certain persons who purchased investments sold by Mortgages Ltd., and
6 (b) certifying a class ("the RB Litigation Class") of certain persons who purchased
7 investments sold by Radical Bunny, LLC. The District Court also appointed Tiffany &
8 Bosco PA as class counsel for the ML Litigation Class ("ML Class Counsel") and
9 Bonnett, Fairbourn, Friedman & Balint, P.C. as class counsel for the RB Litigation Class
10 ("RB Class Counsel"). The ML Litigation Class and the RB Litigation Class are
11 collectively referred to herein as the "Litigation Classes"; ML Class Counsel and RB
12 Class Counsel are collectively referred to herein as "Class Counsel."

13 E. Discovery in the Facciola Litigation, which included the exchange of
14 millions of pages of documents and the depositions of twenty-eight fact witnesses and
15 fourteen expert witnesses, closed on March 13, 2012, and dispositive motions were filed
16 on April 13, 2012.

17 F. Lead Plaintiffs through Class Counsel have thoroughly investigated the
18 allegations of wrongdoing asserted in the First Amended Complaint and with the help of
19 expert witnesses have closely analyzed (a) the alleged damages suffered by the Litigation
20 Classes, and (b) the "self-consuming" insurance coverage available to Greenberg. Lead
21 Plaintiffs and Class Counsel have scrutinized the facts and the applicable law with respect
22 to the claims alleged against Greenberg and the potential defenses thereto, which in Class
23 Counsel's judgment has provided an adequate and fully informed basis for the Settlement
24 described in this Stipulation.

25 **Settlement Negotiations**

26 G. The Parties engaged in an extensive mediation process using experienced
27 and well-respected private mediators, David Geronemus and Lawrence H. Fleischman,
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1 and they have conducted discussions and arm's length negotiations with each other with
2 respect to a compromise and settlement of the claims asserted against Greenberg in the
3 Facciola Litigation.

4 **Greenberg's Denials of Wrongdoing and Liability**

5 H. Greenberg has denied, and continues to deny, each and every claim and
6 contention alleged against it by Lead Plaintiffs in the Facciola Litigation. Greenberg has
7 expressly denied, and continues to deny, all charges of wrongdoing or liability against it
8 arising out of any of the conduct, statements, acts or omissions alleged, or that could have
9 been alleged, in the Facciola Litigation. Greenberg also has expressly denied, and
10 continues to deny, that class certification would be appropriate if the case were litigated
11 rather than settled.

12 I. Nonetheless, Greenberg has concluded that further conduct of the Facciola
13 Litigation would be protracted and expensive, and that it is desirable that the Facciola
14 Litigation be fully and finally settled in the manner and upon the terms and conditions set
15 forth in this Stipulation, solely for the purpose of avoiding the burden, expense, risk and
16 uncertainty of continuing the proceedings. Greenberg has thus determined that it is
17 desirable and beneficial to it that the Facciola Litigation be settled in the manner and upon
18 the terms and conditions set forth in this Stipulation, without acknowledging any
19 wrongdoing, fault, liability or damage to the Lead Plaintiffs or any other member of the
20 Litigation Classes or proposed Settlement Classes (as defined below), and while
21 maintaining the merit of the defenses Greenberg asserted to the claims alleged.

22 **Benefits of the Settlement to the Classes**

23 J. Lead Plaintiffs and Class Counsel believe that the Settlement provides fair,
24 reasonable and adequate monetary recovery for the Settlement Classes (as defined below)
25 based on the claims asserted, the evidence developed and the damages that might be
26 proven by the Lead Plaintiffs and the Litigation Classes in the Facciola Litigation and the
27 amount of insurance coverage available to Greenberg and other claims made upon it.
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1 K. Lead Plaintiffs and Class Counsel further recognize and acknowledge the
2 expense and length of continued proceedings necessary to prosecute the Facciola
3 Litigation through trial and appeal. Lead Plaintiffs and Class Counsel also have
4 considered the uncertain outcome and the risk of any litigation, including the risk that the
5 Litigation Classes might recover nothing, especially in a complex action such as this one,
6 as well as the difficulties and delays inherent in any such litigation. Lead Plaintiffs and
7 Class Counsel are also mindful of the inherent problems of proof and possible defenses to
8 the Facciola Litigation and to the securities law violations asserted against Greenberg and
9 therefore believe that it is desirable that the Released Claims (as defined below) be fully
10 and finally compromised, settled and resolved as set forth herein. Lead Plaintiffs and
11 Class Counsel have also considered that there are several potential coverage defenses,
12 exclusions and competing claims that may be applicable to Greenberg's insurance
13 coverage otherwise available for the claims asserted in the Facciola Litigation, which
14 could materially affect the potential collectability of any judgment entered in the Facciola
15 Litigation. Based upon their evaluation, Lead Plaintiffs and Class Counsel have
16 determined that the Settlement set forth in this Stipulation is fair, reasonable and adequate
17 and in the best interests of Lead Plaintiffs, the Litigation Classes, and the Settlement
18 Classes (as defined below).

19 **NOW THEREFORE**, without any admission or concession on the part of Lead
20 Plaintiffs or Class Counsel regarding any lack of merit of the Facciola Litigation, and
21 without any admission or concession of any liability or wrongdoing or lack of merit in the
22 defenses whatsoever by Greenberg, it is hereby **STIPULATED AND AGREED**, by and
23 among the Parties to this Stipulation, through their respective attorneys, in consideration
24 of the benefits flowing to the Parties hereto from the Settlement and subject to
25 (1) approval of the District Court pursuant to Rule 23(e) of the Federal Rules of Civil
26 Procedure and (2) the other conditions set forth herein, that the claims asserted by Lead
27 Plaintiffs and the Litigation Classes in the Facciola Litigation and all Released Claims (as
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1 defined below) as against the Released Parties (as defined below) will be finally and fully
2 compromised, settled, released and dismissed, on the merits and with prejudice, in the
3 manner and upon and subject to the terms and conditions set forth herein.

4 **Certain Definitions**

5 1. In addition to the definitions set forth above, the following capitalized terms
6 used in this Settlement Stipulation will have the meanings specified below:

7 a. "District Court" means the United States District Court for the
8 District of Arizona.

9 b. "Effective Date" means the first day following the date on which the
10 Settlement contemplated by this Stipulation will become effective as set forth in ¶ 37
11 below.

12 c. "Escrow Account" means the interest-bearing account established
13 pursuant to ¶ 8 herein.

14 d. "Escrow Agent" will mean Rust Consulting, Inc. or its designate.

15 e. "Final Approval" means the expiration of the time for appeal or
16 review of the Judgment (defined below) by the District Court in the Facciola Litigation
17 approving (i) the Settlement and (ii) the release of the Released Claims as to the Released
18 Parties as fair, adequate and reasonable, and dismissing the claims of the Lead Plaintiffs
19 and the Settlement Classes against Greenberg, with prejudice; or, if a motion to alter or
20 amend the Judgment under Federal Rule of Civil Procedure 59(e) is filed or if any appeal
21 is taken, immediately after the determination of that motion or appeal so that it is no
22 longer subject to review upon appeal or review by certiorari or otherwise, and the time for
23 any petition for reargument, appeal or review, by certiorari or otherwise, has expired; or,
24 in the event that the District Court enters Judgment in a form other than that attached
25 hereto as Exhibit C ("Alternative Judgment") and none of the Parties hereto elect to
26 terminate this Settlement, the date that such Alternative Judgment becomes final and no
27 longer subject to appeal or review by certiorari or otherwise, and the time for any petition
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1 for reargument, appeal or review, by certiorari or otherwise, has expired.

2 f. "Final Approval Hearing" means the final hearing to be held by the
3 District Court to determine: (1) whether the proposed Settlement should be approved as
4 fair, reasonable and adequate; (2) whether all Released Claims should be dismissed with
5 prejudice; (3) whether an order approving the Settlement should be entered; and
6 (4) whether the Plan of Allocation of the Settlement Fund should be approved.

7 g. "Greenberg's Counsel" means the law firms of Williams & Connolly
8 LLP and Galbut & Galbut, P.C.

9 h. "Judgment" means the order and final judgment, substantially in the
10 form attached hereto as Exhibit C, or such other substantially similar form agreed to by
11 the Parties, to be entered finally approving the Settlement and dismissing the Facciola
12 Litigation against the Released Parties on the merits with prejudice.

13 i. "Mailed Notice" means the "A.R.S. § 44-2081 Cover Page" and
14 "Notice of Proposed Settlement of Class Action and Final Approval Hearing" and
15 substantially in the form attached hereto as Exhibit B.

16 j. "Mortgages Ltd." or "ML" means Mortgages Ltd., and "Mortgages
17 Ltd. Securities" means Mortgages Ltd. Securities, L.L.C.

18 k. "Net Settlement Fund" will have the meaning set forth in ¶ 9 herein.

19 l. "Notice and Administration Costs" means the costs, fees and
20 expenses that are incurred by the Claims Administrator and Lead Plaintiffs' Counsel in
21 connection with (i) providing notice to the Classes; and (ii) administering the Claims
22 process as well as the costs, fees and expenses incurred in connection with the Escrow
23 Account, provided however, that the Notice and Administration Costs will not include any
24 litigation expenses or any attorneys' fees awarded by the Court.

25 m. "Other Actions" means the following three separate actions in which
26 claims have been asserted against Greenberg: *Roger Ashkenazi, et al. v. Greenberg*
27 *Traurig LLP, et al.*, No. CV2010-020851 (Ariz. Super. Ct.); *Mary Marsh, et al. v.*
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1 *Greenberg Traurig LLP, et al.*, No. CV2010-097769 (Ariz. Super. Ct.); and *Victims*
2 *Recovery, LLC v. Greenberg Traurig LLP, et al.*, No CV2010-052188 (Ariz. Super. Ct.).

3 n. "Person" and "Persons" means any individual, corporation,
4 partnership, limited liability partnership, limited liability company, association, affiliate,
5 joint stock company, estate, trust, trustee, unincorporated association, entity, government
6 and any political subdivision thereof, or any other type of business or legal entity, any
7 legal representative, and their spouses, heirs, predecessors, successors, representatives,
8 agents, members, managers, or assignees.

9 o. "Plan of Allocation" means the separate plan for allocating the Net
10 Settlement Fund to Settlement Classes Members after payment of the Notice and
11 Administration Costs, Taxes and Tax Expenses and such attorneys' fees, costs and
12 expenses as may be approved by the District Court. The Plan of Allocation is not part of
13 the Stipulation, and Greenberg and the other Released Parties will have no liability with
14 respect thereto.

15 p. "Preliminary Approval Order" means the Proposed Order
16 Preliminarily Approving Settlement and Providing for Notice that Lead RB Plaintiffs and
17 Greenberg will seek from the District Court, substantially in the form attached as Exhibit
18 A.

19 q. "Radical Bunny" or "RB" means Radical Bunny, LLC.

20 r. "Released Claims" means any and all claims, debts, demands, rights,
21 liabilities and causes of action, of every nature and description, known or Unknown (as
22 defined in ¶ 1(dd), whether based on federal, state, local or foreign statutory law or
23 common law, rule or regulation, whether fixed or contingent, foreseen or unforeseen,
24 asserted or unasserted, matured or unmatured, accrued or unaccrued, liquidated or
25 unliquidated, whether direct, representative, class or individual in nature, including, but
26 not limited to, any and all claims that Lead Plaintiffs or any Settlement Classes Member
27 has asserted against Greenberg in the Facciola Litigation, or could have asserted against
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1 Greenberg in the Facciola Litigation, or in any forum, that arise out of, are based upon or
2 are related to the allegations, transactions, facts, matters or occurrences, representations or
3 omissions involved, set forth, or referred to in the First Amended Complaint or that arise
4 out of, are based upon or are related to (i) investments in Mortgages Ltd. (or the limited
5 liability companies it managed) or Radical Bunny, (ii) the purchase or other acquisition of
6 interests in deeds of trust issued to Mortgages Ltd., (iii) the purchase of investments,
7 securities or beneficial interests in securities from or issued by Mortgages Ltd. (or the
8 limited liability companies it managed), Mortgages Ltd. Securities or Radical Bunny, (iv)
9 the purchase or other acquisition of interests in loans by Radical Bunny to Mortgages Ltd.,
10 or (v) the representation of Mortgages Ltd. by Greenberg; provided, however, that nothing
11 contained in this definition of Released Claims will release, discharge or impair any rights
12 or claims that Lead Plaintiffs or any Settlement Classes Member may have as a creditor
13 under the plans of reorganization approved in the ML or RB bankruptcy proceedings,
14 except as against any of the Released Parties.

15 s. "Released Parties" means Greenberg and its current, former, and
16 future parents, subsidiaries, affiliates, partners, of counsel, associates, joint venturers,
17 officers, directors, principals, shareholders, members, member entities, predecessors,
18 successors, employees, attorneys, accountants, advisors, insurers, reinsurers, agents
19 (acting in their capacity as agents), servants, administrators, executors, representatives,
20 trustees, vendors, and assigns, and any other individual or entity which is related to or
21 affiliated with Greenberg or its current, former, and future legal representatives,
22 successors in interest or assigns, individually, jointly and severally. With respect to each
23 natural person who is one of the Released Parties, his or her current, former, and future
24 spouses, marital estates, heirs, joint tenants, tenants in common, beneficiaries, executors
25 and administrators are further included in this definition as Released Parties. "Released
26 Parties" specifically does not include Quarles & Brady, LLP, Mayer Hoffmann McCann,
27 P.C., CBIZ, Inc., CBIZ MHM, LLC.
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1 t. "Second Payment Escrow Account" means the segregated escrow
2 account or accounts, insured by the FDIC (to the extent such FDIC insurance is available),
3 and established by the Second Payment Escrow Agent, into which Greenberg will cause
4 the payment in ¶ 8(b) to be made, and which will hold those funds until, as required by
5 this Settlement, they are released either into the Escrow Account upon satisfaction of the
6 conditions of ¶ 8(d) or returned to the entities that made payment upon satisfaction of the
7 conditions of ¶ 40.

8 u. "Second Payment Escrow Agent" will mean Wiley Rein LLP,
9 counsel to Greenberg's insurers, and/or its designate(s).

10 v. "Settlement" means the collective settlement terms set forth in this
11 Stipulation.

12 w. "Settlement Administrator" means Rust Consulting, Inc., the firm
13 which Class Counsel requests be appointed by the District Court to administer the
14 Settlement and disseminate notice of the pendency of the Facciola Litigation and the
15 proposed Settlement to those persons who fall within the Settlement Classes, provided
16 that Class Counsel may in its discretion perform such services in lieu of the Settlement
17 Administrator.

18 x. "Settlement Classes" means, collectively:

- 19 1. all Persons who, during the Settlement Classes Period,
20 (a) invested or held investments in Radical Bunny; (b) purchased (or
21 held) through Radical Bunny interests in loans by Radical Bunny to
22 Mortgages Ltd.; (c) purchased (or held) through Radical Bunny
23 interests in deeds of trust issued to Mortgages Ltd.; or (d) purchased
24 or held investments, securities, or beneficial interests in securities
25 from or issued by Radical Bunny ("the RB Settlement Class"); and
26 2. all Persons who, during the Settlement Classes Period,
27 (a) invested or held investments in Mortgages Ltd. (or the limited
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1 liability companies it managed); (b) purchased, acquired, or held
2 interests in deeds of trust issued to Mortgages Ltd.; or (c) purchased
3 or held investments, securities, or beneficial interests in securities
4 from or issued by Mortgages Ltd. (or the limited liability companies
5 it managed) or Mortgages Ltd. Securities (“the ML Settlement
6 Class”).

7 Excluded from the definition of “Settlement Classes” in the foregoing (1) and (2) are all
8 of the following:

9 (i) Mortgages Ltd., Mortgages Ltd. Securities, Radical
10 Bunny, and each of their officers, directors, managers, owners, shareholders, employees,
11 affiliates, agents, legal representatives, predecessors, successors, and assigns;

12 (ii) Scott Coles, Ashley Coles, and their children, heirs,
13 family trusts, and estates;

14 (iii) the entities named at any time as defendants in the
15 Facciola Litigation (Greenberg Traurig, LLP, Quarles & Brady LLP, CBIZ, Inc., CBIZ
16 MHM, LLC, and Mayer Hoffman McCann, P.C.);

17 (iv) the individuals named at any time as defendants in the
18 Facciola Litigation (Michael M. Denning, Donna J. Denning, Todd S. Brown, Cynthia D.
19 Brown, Christopher J. Olson, Rachel L. Schwartz-Olson, Jeffrey A. Newman, Kathleen N.
20 Newman, Tom Hirsch, Diane Rose Hirsch, Howard E. Walder, Berta F. Walder, Harish P.
21 Shah, and Madhavi H. Shah), and each of their spouses, family trusts, and estates; and

22 (v) all Persons who are presently named as plaintiffs in
23 *Roger Ashkenazi, et al. v. Greenberg Traurig LLP, et al.*, No. CV2010-020851 (Ariz.
24 Super. Ct.), or *Mary Marsh, et al. v. Greenberg Traurig LLP, et al.*, No. CV2010-097769
25 (Ariz. Super. Ct.), and all Persons who have assigned claims to the Plaintiff in *Victims*
26 *Recovery, LLC v. Greenberg Traurig LLP, et al.*, No CV2010-052188 (Ariz. Super. Ct.),
27 but only to the extent those Persons have assigned a claim or claims to Victims Recovery,
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1 LLC.

2 y. "Settlement Classes Members" means Persons (a) who fall within the
3 definition of the Settlement Classes in ¶ 1(x) and (b) who do not timely and properly
4 request to be excluded from the Settlement Classes. Any putative Settlement Classes
5 Member who files a timely request for exclusion but who thereafter retracts that request
6 for exclusion pursuant ¶ 31 below will not be excluded from the Settlement Classes and
7 will be bound by the Settlement.

8 z. "Settlement Classes Period" means the time from September 1, 2005
9 through June 3, 2008.

10 aa. "Settlement Fund" means the amounts paid into the Escrow Account
11 pursuant to ¶ 8.

12 bb. "Taxes" means any taxes due and payable with respect to the income
13 earned by the Settlement Fund, including any interest or penalties thereon.

14 cc. "Tax Expenses" means any expenses and costs incurred in
15 connection with the payment of Taxes (including, without limitation, expenses of tax
16 attorneys and/or accountants and expenses relating to the filing or failure to file all
17 necessary or advisable tax returns).

18 dd. "Unknown Claims" means any and all Released Claims that Lead
19 Plaintiffs or any Settlement Classes Member does not know or suspect to exist in his, her
20 or its favor at the time of the release of the Released Parties. With respect to any and all
21 Released Claims, the Parties stipulate and agree that upon the Effective Date, Lead
22 Plaintiffs will expressly, and each Settlement Classes Member will be deemed to have,
23 and by operation of the Judgment will have expressly, waived any and all provisions,
24 rights and benefits conferred by any law of any state or territory of the United States, or
25 principle of common law or foreign law, which is similar, comparable or equivalent to
26 Cal. Civ. Code § 1542, which provides:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
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1 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
2 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
3 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
4 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

4 Lead Plaintiffs and Lead Plaintiffs' Counsel understand and acknowledge, and Settlement
5 Classes Members by operation of law will be deemed to have acknowledged, the
6 significance of this waiver of Cal. Civ. Code § 1542 and/or any other applicable federal or
7 state law relating to limitations on releases. Lead Plaintiffs and Greenberg acknowledge,
8 and Settlement Classes Members by operation of law will be deemed to have
9 acknowledged, that the inclusion of "Unknown Claims" in the definition of Released
10 Claims was separately bargained for and was a key element of the Settlement.

11 **CLASS CERTIFICATION**

12 2. Greenberg contends that the Facciola Litigation should not be certified as a
13 class action under Federal Rule of Civil Procedure 23, and denies that any class should be
14 certified other than for purposes of this Settlement. Solely for purposes of this Settlement
15 and for no other purpose, each of the Parties stipulates and agrees to the Facciola
16 Litigation proceeding as a class action with the proposed Settlement Classes as defined in
17 ¶ 1(x), subject to the District Court's approval under Federal Rule of Civil Procedure 23.
18 Nothing in this Stipulation of Settlement shall be construed as an agreement or admission
19 by Greenberg that the Facciola Litigation or any similar case is amenable to class
20 certification for trial purposes or that either the Litigation Classes as defined in ¶ D or the
21 Settlement Classes as defined in ¶ 1(x) have been previously certified as classes with
22 claims against Greenberg for trial. Furthermore, nothing in this Stipulation of Settlement
23 shall prevent Greenberg from opposing or appealing class certification or seeking de-
24 certification of any class if the Settlement does not reach Final Approval or if the
25 Effective Date does not occur for any reason.

26 **MUTUAL RELEASE OF CLAIMS**

27 3. The obligations incurred pursuant to this Stipulation will be in full and final
28 disposition of the Facciola Litigation as against the Released Parties and will fully, finally

1 and forever compromise, settle, release, resolve, relinquish, waive, discharge and dismiss,
2 on the merits and with prejudice, the claims asserted against Greenberg in the Facciola
3 Litigation and any and all Released Claims against the Released Parties.

4 4. Pursuant to the Judgment, without further action by anyone, upon the
5 Effective Date of this Settlement, Lead Plaintiffs will have, and each of the Settlement
6 Classes Members will be deemed to have, and by operation of law and of the Judgment
7 will have, on behalf of themselves, their current and former spouses, heirs, joint tenants,
8 tenants in common, beneficiaries, executors and administrators, past and present
9 successors, predecessors, parents, subsidiaries, affiliates, officers, directors, shareholders,
10 employees, members, managers, trustees, agents, representatives, attorneys, insurers and
11 assigns, and any person they represent or that acts by, through, under, or in concert with
12 them, or any of them, fully, finally, and forever compromised, settled, released, resolved,
13 relinquished, waived, discharged and dismissed the Released Parties of and from the
14 Released Claims, with prejudice and on the merits, without costs to any party, whether or
15 not such Settlement Classes Member receives actual notice of the Settlement prior to the
16 final approval of the Settlement, or receives a distribution from the Net Settlement Fund,
17 except for claims to enforce the Settlement.

18 5. Upon the Effective Date, Lead Plaintiffs and all Settlement Classes
19 Members, on behalf of themselves, their current and former spouses, heirs, joint tenants,
20 tenants in common, beneficiaries, executors, administrators, past and present successors,
21 predecessors, parents, subsidiaries, affiliates, officers, directors, shareholders, employees,
22 members, managers, trustees, agents, representatives, attorneys, insurers and assigns, and
23 any person they represent or that acts by, through, under, or in concert with them, or any
24 of them, are forever barred and enjoined from commencing, instituting, or continuing to
25 prosecute any action or proceeding in any court of law or equity, arbitration tribunal,
26 administrative forum, or other forum of any kind, asserting against any of the Released
27 Parties, and each of them, any of the Released Claims, and expressly covenant not to
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1 assert any such Released Claim as against any of the Released Parties, except for claims to
2 enforce the Settlement.

3 6. Upon the Effective Date of this Settlement, Greenberg on behalf of itself
4 and its predecessors, successors in interest, and counsel of record will release and will be
5 deemed by this Settlement to have released and forever discharged Lead Plaintiffs and
6 Class Counsel from any and all claims, known or unknown, arising out of or relating to
7 their filing, prosecution or settlement of the Facciola Litigation, except for claims to
8 enforce the Settlement.

9 **TERMS OF THE JUDGMENT**

10 7. If the Settlement embodied in this Stipulation is approved by the Court,
11 Class Counsel and Greenberg's Counsel will request that the Court enter a Judgment,
12 substantially in the form annexed hereto as Exhibit C which will, among other things,
13 contain terms providing for a Bar Order substantially in the form set forth below,
14 including:

15 (a) A contribution bar order in accordance with A.R.S. § 44-2003(K)
16 barring and extinguishing any and all claims in any state, federal, or foreign
17 jurisdiction for contribution based upon, arising out of, or related to any Released
18 Claim, including, but not limited to, any claim that is based upon, arises out of, or
19 relates to the Facciola Litigation, or the transactions and occurrences referred to in
20 the First Amended Complaint, or in any counterclaims or third-party claims by any
21 (i) person or entity against the Released Parties, or any of them, and (ii) the
22 Released Parties against any person or entity, other than as set forth in A.R.S. § 44-
23 2003(K)(2); provided, however, that, if the Lead Plaintiffs or the Settlement
24 Classes Members, or any of them, obtain any judgment against any such person or
25 entity based upon, arising out of, or relating to Released Claims covered by A.R.S.
26 § 44-2003(K), that person or entity will be entitled to a judgment credit, in
27 accordance with A.R.S. § 44-2003(K), equal to the greater of (i) an amount that
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1 or foreign jurisdiction against any and all Persons arising under state, federal,
2 foreign, or common law, however styled, whether for indemnification or
3 contribution or otherwise denominated (including, without limitation, claims for
4 breach of contract, negligence, professional liability, breach of fiduciary duty,
5 misrepresentation, conspiracy, unjust enrichment, or aiding and abetting), where
6 the claim constitutes, is based upon, arises out of or relates to a Released Claim.
7 The provisions of this complete bar order are intended to preclude any liability by
8 any Person to the Released Parties for indemnification, contribution, or otherwise
9 on any claim in which the Released Parties, or any of them, seek to recover from
10 any Person (i) any amounts the Released Parties are liable, or may become liable,
11 to pay to the Lead Plaintiffs or the Settlement Classes Members; and/or (ii) any
12 costs, expenses, or attorneys' fees from defending any claim(s) asserted by the
13 Lead Plaintiffs or the Settlement Classes Members.

14 (d) Nothing in this Bar Order will prevent a putative Settlement Classes
15 Member who timely and validly requested an exclusion from the Settlement
16 Classes from pursuing any Released Claim against any Released Party. If any
17 putative Settlement Classes Member who validly requests exclusion from the
18 Settlement Classes pursues any such Released Claim against any Released Party,
19 nothing in the Bar Order or in this Stipulation will operate to preclude such
20 Released Party from asserting any claim of any kind against such putative
21 Settlement Classes Member (or from seeking contribution or indemnity from any
22 Person, including any former or current co-defendant in the Facciola Litigation, in
23 respect to the claim of such putative Settlement Classes Member who validly
24 requests exclusion from the Settlement Classes).

25 (e) Notwithstanding anything to the contrary in the Bar Order and this
26 Stipulation, in the event that any Person (for purposes of this paragraph, a
27 "petitioner") commences against any of the Released Parties any action asserting a
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1 claim that is based upon, arises out of, or relates to any Released Claim belonging
2 to Lead Plaintiffs, the Settlement Classes, or a Settlement Classes Member and
3 such claim is not barred by a court pursuant to ¶ (c) or is not otherwise barred by
4 the Bar Order, the Bar Order will not bar claims by that Released Party against (i)
5 such petitioner; (ii) any Person who is or was controlled by, controlling or under
6 common control with the petitioner, or whose assets or estate are or were
7 controlled, represented or administered by the petitioner, or as to whose claims the
8 petitioner has succeeded; and (iii) any Person that participated with any of the
9 Persons described in items (i) and (ii) of this provision in connection with the
10 conduct, transactions or occurrences that are the subject of the claim brought
11 against the Released Party(s). Nothing in this paragraph will be deemed to create a
12 claim or cause of action against a petitioner or any other Person described in this
13 paragraph.

14 (f) Notwithstanding anything in ¶¶ (a)-(c) above, nothing in this
15 Stipulation shall be deemed to alter the rights between Greenberg and its insurers.

16 If any provision of this Bar Order is subsequently held to be unenforceable, the Parties
17 will propose to the Court alternative terms so as to afford all of the Released Parties the
18 fullest protection permitted by law and consistent with any concerns expressed by the
19 Court.

20 **THE SETTLEMENT CONSIDERATION**

21 8. In full and complete settlement of the Released Claims,

22 (a) Greenberg will pay, or cause to be paid \$100,000.00, no later than ten (10)
23 business days following the date of the entry of the Preliminary Approval Order, into the
24 Escrow Account established for the Settlement Fund, for use by the Settlement
25 Administrator or the Escrow Agent to pay the costs of providing notice to the Settlement
26 Classes Members and otherwise administering the Settlement on behalf of the Settlement
27 Classes;

1 (b) Greenberg will pay, or cause to be paid \$50,917,740.00, no later than thirty (30)
2 calendar days after entry of the Judgment, into the Second Payment Escrow Account;

3 (c) Greenberg will pay, or cause to be paid \$10,000,000.00 on or before February
4 10, 2013, into the Escrow Account; and

5 (d) No later than ten (10) business days after Final Approval, the Second Payment
6 Escrow Agent will cause the monies paid into the Second Payment Escrow Account
7 pursuant to subparagraph (b) to be paid into the Escrow Account.

8 9. The Settlement Fund, net of any Taxes and Tax Expenses, will be used to
9 pay (1) the Notice and Administration Costs, (2) the approved attorneys' fees and
10 expenses referred to in ¶ 16 and (3) the remaining administration expenses referred to in ¶
11 11. The balance of the Settlement Fund after the above payments constitutes the "Net
12 Settlement Fund," which will be distributed to the Settlement Classes Members as
13 provided in the Plan of Allocation. All costs and expenses incurred by or on behalf of the
14 Lead Plaintiffs and the Settlement Classes associated with the Settlement and approved by
15 the District Court will be paid from the Settlement Fund; in no event will any of the
16 Released Parties bear any further or additional responsibility for any such costs or
17 expenses beyond payment of the Settlement Fund.

18 10. All funds held by the Escrow Agent will be deemed to be in the custody of
19 the District Court and such funds will remain subject to the jurisdiction of the District
20 Court until such time as the funds will be distributed to the Settlement Classes Members
21 or returned to Greenberg pursuant to this Stipulation and/or further order of the District
22 Court. The Escrow Agent will hold the funds in an interest-bearing bank account insured
23 by the FDIC and/or United States Agency or Treasury securities or obligations.
24 Greenberg will not be liable for the loss of any portion of the Settlement Fund after
25 payment into the Escrow Account.

26 11. The Escrow Agent will not disburse more than \$100,000.00 from the
27 Settlement Fund for Notice and Administration Costs absent an order of the District Court
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1 or the written agreement of counsel for all Parties.

2 12. Upon the payment of the Settlement Fund, the Parties agree to treat the
3 Settlement Fund as a Qualified Settlement Fund within the meaning of Treasury
4 Regulation § 1.468B-1 and the Settlement Administrator will be responsible for timely
5 making such elections as are necessary or advisable to carry out the provisions of this
6 paragraph, including but not limited to the relation-back election (as defined in Treasury
7 Reg. § 1.468B-1) to the earliest permitted date. Such elections will comply with the
8 procedures and requirements contained in such Regulations. Additionally, it will be the
9 responsibility of the Settlement Administrator to prepare and deliver the necessary
10 documentation for signature by all necessary Parties, and thereafter to cause the
11 appropriate filing(s) to occur. The Settlement Administrator and Class Counsel, as
12 required, will do all things that are necessary or advisable to carry out the provisions of
13 this paragraph and Greenberg will reasonably cooperate with the Settlement Administrator
14 and Class Counsel to carry out the provisions of this paragraph.

15 13. All Taxes (including any interest or penalties) arising with respect to the
16 income earned by the Settlement Fund after payment into the Escrow Account, including
17 any Taxes or Tax detriments that may be imposed upon Greenberg with respect to any
18 income earned by the Settlement Fund for any period during which the Settlement Fund
19 does not qualify as a "qualified settlement fund" (limited by the amount of simple interest
20 earned on the Settlement Fund at the LIBOR and not any higher interest rate that
21 Greenberg may earn on the Settlement Fund) for Federal or state income tax purposes and
22 all Tax Expenses will be considered to be a cost of administration of the Settlement and
23 will be paid out of the Settlement Fund. The Released Parties will not have any liability or
24 responsibility for any such Taxes or Tax Expenses. The Settlement Administrator will
25 indemnify and hold each of the Released Parties harmless for any liability or obligation
26 whatsoever relating to the administration of the Settlement Fund, the distribution of the
27 Net Settlement Fund or implementation of the Plan of Allocation. The Settlement
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1 Administrator, or its agents, will timely and properly file all informational and other tax
2 returns necessary or advisable with respect to the Settlement Fund and the distributions
3 and payments therefrom, including, without limitation, the tax returns described in Treas.
4 Reg. § 1.468B-2(k), and to the extent applicable, Treas. Reg. § 1.468B-2(l). Such returns
5 will be consistent with the terms hereof and in all events will reflect that all such Taxes,
6 including any interest or penalties, on the income earned by the Settlement Fund will be
7 paid out of the Settlement Fund, subject to the limitations set forth in this paragraph. The
8 Settlement Administrator, or its agents, will also timely pay Taxes and Tax Expenses,
9 subject to the limitations set forth in this paragraph, out of the Settlement Fund, and are
10 authorized to withdraw, without prior order of the District Court, from the Settlement
11 Fund amounts necessary to pay Taxes and Tax Expenses. The Parties hereto agree to
12 cooperate with the Settlement Administrator, each other, and their tax attorneys and
13 accountants to the extent reasonably necessary to carry out the provisions of this
14 Stipulation.

15 14. This is not a claims-made settlement. As of the Effective Date, Greenberg
16 will have no right to the return of the Settlement Fund or any portion thereof. Any
17 undistributed money from the Settlement Fund that cannot be distributed cost effectively
18 to the Settlement Classes Members will be donated to one or more non-sectarian, not-for-
19 profit 501(c)(3) organization(s) designated by Lead Plaintiffs and approved by the District
20 Court.

21 15. The finality of the Settlement will not be conditioned on any ruling by the
22 District Court concerning the Plan of Allocation or the approval of attorneys' fees and
23 expenses to Class Counsel. Any order or proceeding relating to a request for approval of
24 the Plan of Allocation, or of attorneys' fees and expenses or any appeal from any order
25 relating thereto or reversal or modification thereof, will not operate to delay or terminate
26 the Settlement or affect or delay the Effective Date or the effectiveness or finality of the
27 Judgment and the release of the Released Claims. However, there will be no distribution
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1 of any of the Net Settlement Fund to any Class Member until the Plan of Allocation is
2 finally approved and such order of approval is affirmed on appeal and/or is no longer
3 subject to review by appeal or certiorari, and the time for any petition for rehearing,
4 appeal, or review, by certiorari or otherwise, has expired.

5 **ATTORNEYS' FEES AND EXPENSES**

6 16. Class Counsel will apply to the District Court for attorneys' fees in the
7 amount of 15% of the Settlement Fund, plus reimbursement of unreimbursed litigation
8 expenses. Such amounts as are approved by the District Court will be payable from the
9 Settlement Fund.

10 17. Greenberg and the other Released Parties will have no responsibility or
11 liability for, and will take no position with respect to, any application for attorneys' fees
12 or expenses, the allocation of fees and expenses that the District Court may approve in this
13 action, or the proposed Plan of Allocation for the Settlement Fund.

14 18. The procedure for and amounts of attorneys' fees and expenses, and the
15 allowance or disallowance by the District Court thereof, are not a condition of the
16 Settlement. Class Counsel will request that their application for attorneys' fees and
17 expenses be considered by the District Court at the Final Approval Hearing separately
18 from the District Court's consideration of the fairness and adequacy of the Settlement.
19 Any order or proceedings relating to such request, or any appeal from any order relating
20 thereto or reversal or modification thereof, will not operate to delay or terminate the
21 Settlement or affect or delay the Effective Date or the effectiveness or finality of the
22 Judgment and the release of the Released Claims. The finality of the Settlement will not
23 be conditioned on any ruling by the District Court concerning any application for
24 attorneys' fees and expenses.

25 19. Except as otherwise provided in this paragraph, the attorneys' fees and
26 expenses approved by the District Court will be paid by the Settlement Administrator
27 from the Settlement Fund within five (5) business days of the date the District Court
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1 enters an order approving such fees and expenses or, if sufficient funds are not yet
2 available in the Settlement Fund on that date to pay the attorneys' fees and expenses
3 approved by the District Court, the payment will be made within five (5) business days of
4 the date that the necessary funds are deposited in the Settlement Fund. In the event that
5 the Effective Date does not occur, or the Judgment is reversed or modified in any way that
6 affects attorney fees and expenses, or the Settlement is terminated for any other reason,
7 then each counsel receiving fees or expenses under this provision will, within ten (10)
8 business days from receiving notice from Greenberg's Counsel or from a court of
9 appropriate jurisdiction, refund to the Settlement Fund either the full amount of the fees
10 and expenses previously received by it pursuant to these provisions (in the event the
11 Judgment is reversed) or an amount consistent with any modification of the Judgment
12 with respect to attorneys' fees and expenses. Class Counsel agree that they and their
13 shareholders are subject to jurisdiction of the District Court for the purpose of enforcing
14 the provisions of this paragraph.

15 **DISTRIBUTION TO SETTLEMENT CLASSES MEMBERS**
16 **AND ADMINISTRATION OF SETTLEMENT**

17 20. Class Counsel or the Settlement Administrator will oversee implementation
18 of the Court-approved Plan of Allocation and distribution of the Settlement Fund, and will
19 perform all calculations, determinations and claims administration procedures necessary
20 or appropriate in connection therewith.

21 21. The Settlement Fund will be applied as follows:

- 22 i. To pay all Notice and Administration Costs incurred;
- 23 ii. To pay Taxes and Tax Expenses owed by the Settlement Fund;
- 24 iii. Subject to the approval and further order(s) of the District Court, for
25 payment of all attorneys' fees and expense reimbursement as may be
26 approved by the District Court to Class Counsel;
- 27 iv. Subject to the approval and further order(s) of the District Court, and
28 upon the Effective Date, to distribute the Net Settlement Fund to the

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Settlement Classes Members pursuant to the Plan of Allocation.

22. Each Settlement Classes Member will be deemed to have submitted to the jurisdiction of the District Court with respect to his, her or its share of the Net Settlement Fund. All determinations and distributions of the Net Settlement Fund by the Settlement Administrator in accordance with the Plan of Allocation are final, binding and non-appealable.

23. Regardless of the amount of the distribution received from the Settlement Fund, if any, each Settlement Classes Member will remain bound by all of the terms of this Stipulation, including the terms of the Judgment, if applicable, to be entered in the Facciola Litigation and the applicable Releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against the Released Parties asserting any Released Claims in the event that the Effective Date occurs.

24. Neither Greenberg nor any other Released Party will have any liability, obligation or responsibility whatsoever for the administration of either of the Settlement Fund or disbursement of the Net Settlement Fund.

25. No Settlement Classes Member will have any claim against Class Counsel, Lead Plaintiffs, any of the Released Parties or their counsel, the Escrow Agent, the Settlement Administrator or any employees or agents of any of the foregoing, based on the distributions made substantially in accordance with this Stipulation or as otherwise approved or directed by the District Court. Payment pursuant to this Stipulation will be deemed final and conclusive against all Settlement Classes Members.

26. All proceedings with respect to the administration, processing and distribution of the Settlement Fund, the determination of the amounts due to Settlement Classes Members under the Plan of Allocation and the determination of all controversies relating thereto, are subject to the jurisdiction of the District Court.

27. The Net Settlement Fund will not be distributed by the Settlement

1 Administrator until after the Effective Date.

2 28. Following distribution of the Net Settlement Fund, the Settlement
3 Administrator will maintain its records for three years after the Effective Date.

4 **REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASSES**

5 29. Each member of the Settlement Classes will be bound by all determinations
6 and judgments in the Facciola Litigation concerning the Settlement unless such person
7 sends to the Settlement Administrator, by first class mail or email, a written request for
8 exclusion from the relevant Settlement Class(es). In order to be valid, the request for
9 exclusion must (1) be postmarked or emailed on or before August 13, 2012, so long as
10 that date is at least thirty-five (35) calendar days from the date notice was sent to the
11 Settlement Classes, or, if it is not, the earliest date that is thirty-five (35) calendar days
12 from the date notice was sent to the Settlement Classes, and (2) state all of the following:
13 (a) the name, address and telephone number of the person requesting exclusion; (b) the
14 identity of the Mortgages Ltd. and/or Radical Bunny investments purchased (or otherwise
15 acquired); (c) the face value of the investment still held as of June 3, 2008; (d) the price or
16 other consideration paid for such investments; (e) the date of each purchase; and (f) a
17 clear and unequivocal statement that the person wishes to be excluded from the relevant
18 Settlement Class(es). The failure of any Settlement Classes Member to provide complete
19 or accurate information called for by sub-paragraphs 2(b) or 2(d)-(e) will not invalidate
20 the Request for Exclusion. All persons who submit valid and timely Requests for
21 Exclusion in the manner set forth in this paragraph will have no rights under this
22 Stipulation, will not share in the distribution of the Net Settlement Fund, and will not be
23 bound by the Stipulation or the Judgment, unless the Request for Exclusion is validly
24 retracted pursuant ¶ 31 below.

25 30. The Settlement Administrator will scan and email copies of each Request
26 for Exclusion in PDF format (or such other format as may be agreed) to Greenberg's
27 Counsel and to Class Counsel expeditiously (and not more than three (3) business days)
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1 after the Settlement Administrator receives such a request. As part of the motion papers
2 in support of the Settlement of the Action, the Settlement Administrator or Class Counsel
3 will cause to be provided a list of all the persons who have requested exclusion from the
4 Settlement Classes, and will cause to be certified that all Requests for Exclusion received
5 by the Claims Administrator have been copied and provided to Greenberg's Counsel no
6 later than seven calendar (7) days from the date a request for exclusion must be
7 postmarked or emailed in order to be valid pursuant to ¶ 29.

8 31. Any putative Settlement Classes Member may retract a prior request for
9 exclusion by providing to Class Counsel and to Greenberg's Counsel a written notice
10 stating his, her, or its desire to retract the request for exclusion from the Settlement
11 Classes by 12:00 p.m., Pacific Standard Time, three (3) calendar days before the Final
12 Approval Hearing. Any such written notice retracting the request for exclusion also must
13 include an affirmation that the Settlement Classes Member makes such retraction freely
14 and of his, her, or its own volition, without coercion by anyone. Any putative Settlement
15 Classes Member who validly retracts a request for exclusion pursuant to this paragraph
16 will not be excluded from the Settlement Classes and will be bound by the Settlement.

17 **PRELIMINARY APPROVAL ORDER**

18 32. On June 20, 2012, Class Counsel will file the Stipulation and its Exhibits
19 with the District Court and will apply for entry of the Preliminary Approval Order
20 substantially in the form annexed hereto as Exhibit A.

21 **NOTICE UNDER CLASS ACTION FAIRNESS ACT OF 2005 ("CAFA NOTICE")**

22 33. Greenberg's Counsel will send CAFA Notice in accordance with 28 U.S.C.
23 § 1715 on June 20, 2012.

24 34. Class Counsel has provided Greenberg's Counsel a list of every state in
25 which a putative Settlement Classes Member resides, and the number of putative
26 Settlement Classes Members residing in each state, so that Greenberg may send CAFA
27 Notice in accordance with 28 U.S.C. § 1715.

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JUDGMENT

35. If the Settlement contemplated by this Stipulation is approved by the District Court, Class Counsel and Greenberg's Counsel will jointly request that the District Court enter a Judgment substantially in the form annexed hereto as Exhibit C.

GREENBERG'S OPTION TO TERMINATE SETTLEMENT

36. Greenberg has the option to terminate this Stipulation no fewer than ten (10) calendar days before the Final Approval Hearing if putative Settlement Classes Member(s) whose investments exceed a specified aggregate amount, as determined by the face value of the investment still held as of June 3, 2008, file valid and timely Requests for Exclusion, as further set forth in a confidential "Supplemental Agreement" executed by the Parties simultaneously herewith. The Supplemental Agreement will not be filed with the District Court except that the substantive contents of the Supplemental Agreement may be brought to the attention of the District Court, under seal, if so requested by the District Court, or if a dispute arises among the Parties concerning the Supplemental Agreement's interpretation or application. Greenberg may disclose copies of the Supplemental Agreement to the recipients of its CAFA notices pursuant to its obligations under 28 U.S.C. § 1715. The Parties will otherwise keep the terms of the Supplemental Agreement confidential, except if compelled by judicial process to disclose the Supplemental Agreement. In the event the Settlement and this Stipulation are terminated pursuant to this paragraph, this Stipulation will become null and void and of no further force and effect, except that the provisions of ¶¶ 39, 40, and 41 will survive termination.

EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

37. The Effective Date of Settlement will be deemed to occur on the occurrence or waiver, as applicable, of all of the following events:

- i. entry of the Preliminary Approval Order;
- ii. Greenberg has not exercised its option to terminate its participation in

1 this Stipulation pursuant to the provisions of this Stipulation
2 (including the Supplemental Agreement);

3 iii. approval by the District Court of the Settlement and certification of
4 the Settlement Classes following class notice and a hearing in
5 accordance with Rule 23 of the Federal Rules of Civil Procedure and
6 entry of Judgment;

7 iv. the Judgment has reached Final Approval, as defined above; and

8 v. payment by Greenberg of \$61,017,740.00 into the Settlement Fund as
9 set forth in ¶ 8.

10 38. Greenberg or Lead Plaintiffs will have the right to terminate the Settlement
11 and this Stipulation by providing written notice of their election to do so (“Termination
12 Notice”) to the other within seven calendar (7) days of the date on which: (1) the District
13 Court declines to enter the Preliminary Approval Order; (2) the District Court declines to
14 approve this Settlement or any material part of it, provided, however, that neither the
15 allowance or disallowance by the Court of any application for attorneys’ fees and
16 expenses nor the approval or disapproval of the Plan of Allocation will be material; (3) the
17 District Court declines to enter the Judgment; (4) the Judgment is vacated, modified or
18 reversed in any material respect by the United States Court of Appeals for the Ninth
19 Circuit or the United States Supreme Court; (5) an Alternative Judgment is vacated,
20 modified or reversed in any material respect by the United States Court of Appeals for the
21 Ninth Circuit or the United States Supreme Court; or (6) the Effective Date of Settlement
22 otherwise does not occur, except that (i) if such Effective Date does not occur as a result
23 of the failure of Greenberg to pay the \$61,017,740.00 into the Settlement Fund as required
24 by ¶ 8, Greenberg may not terminate the Settlement. Neither a modification nor a reversal
25 on appeal of (i) any ruling on attorneys’ fees, costs and expenses by the Court to Class
26 Counsel or (ii) the Plan of Allocation will be deemed a material modification of the
27 Judgment or this Stipulation. Greenberg may also terminate the Settlement and this
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1 Stipulation pursuant to ¶ 36. In the event the Settlement and this Stipulation are
2 terminated, the provisions of ¶¶ 39, 40, and 41 will survive termination.

3 39. In the event the Settlement is terminated or if the Effective Date fails to
4 occur for any reason, the Parties to this Stipulation will be deemed to have reverted *nunc*
5 *pro tunc* to their respective status in the Facciola Litigation as of the date and time
6 immediately prior to the execution of this Stipulation and, except otherwise expressly
7 provided, the Parties will proceed in all respects as if this Stipulation and any related
8 orders had not been entered and without any prejudice in any way from the negotiation,
9 fact or terms of the Settlement or this Stipulation. This Stipulation may not be used in the
10 Action or in any other proceeding for any purpose, and any Judgment or order entered by
11 the Court in accordance with the terms of this Stipulation will be treated as vacated, *nunc*
12 *pro tunc*.

13 40. In the event this Settlement is terminated or if the Effective Date fails to
14 occur for any reason, then within ten (10) business days after written notice is sent by
15 Class Counsel or Greenberg's Counsel, the Settlement Administrator or Class Counsel
16 will (a) refund to the Settlement Fund the portion of the Notice and Administration Costs
17 not already incurred or paid from the Settlement Fund and (b), if the Settlement is
18 terminated for reasons other than (1) the failure of Greenberg to pay the \$61,017,740.00
19 into the Settlement Fund as required by ¶ 8 or (2) termination by Greenberg under ¶ 36,
20 reimburse the Settlement Fund with an amount equal to one-half of the portion of the
21 Notice and Administration Costs already incurred or paid from the Settlement Fund. The
22 balance of the Settlement Fund (including any interest actually accrued thereon) will then
23 be refunded to Greenberg within five (5) business days and any amounts in the Second
24 Payment Escrow Account will be returned to the entities that made payment into that
25 account.

26 **NO ADMISSION OF WRONGDOING**

27 41. Whether or not the Settlement is approved by the Court, and whether or not
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1 it is consummated, the fact and terms of this Stipulation, including Exhibits, all
2 negotiations, discussions, drafts, and proceedings in connection with the Settlement, and
3 any act performed or document signed in connection with the Settlement:

- 4 i. may not be construed, offered or received against Greenberg or any other
5 Released Party, as evidence of, or construed as, or be deemed to be evidence
6 of, any presumption, concession or admission with respect to the truth of any
7 fact alleged by Lead Plaintiffs or the validity, or lack thereof, of any claim
8 that had been or could have been asserted in the Facciola Litigation or in any
9 litigation, or the deficiency of any defense that has been or could have been
10 asserted in the Facciola Litigation or in any litigation, or of any liability, fault
11 or wrongdoing of Greenberg or other Released Parties; and
12 ii. may not be construed, offered or received against Lead Plaintiffs or the
13 Litigation Classes or any of them as evidence of, or construed as, or deemed
14 to be evidence of any presumption, concession or admission that any of their
15 claims are or were without merit or that damages recoverable under the First
16 Amended Complaint would not have exceeded the Settlement Fund.

17 42. Once approved by the Court, this Settlement may be pleaded as a full and
18 complete defense by any of the Released Parties to any action, suit or other proceeding
19 that may be instituted, prosecuted or attempted with respect to any of the Released
20 Claims. The Released Parties may offer the Stipulation or the Judgment from the Facciola
21 Litigation in any other action that may be brought against them by any Settlement Classes
22 Member or any Person who may be subject to the Bar Order in order to support a defense
23 or counterclaim based on principles of res judicata, collateral estoppel, release, good faith
24 settlement, judgment bar or reduction or any similar defense or counterclaim.

25 **MISCELLANEOUS PROVISIONS**

26 43. The headings herein are used for the purpose of convenience only and are
27 not meant to have legal effect.
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1 44. All of the Exhibits attached hereto are hereby incorporated by reference as
2 though fully set forth herein. Notwithstanding the foregoing, in the event of a conflict or
3 inconsistency between the terms of this Stipulation and the terms of any exhibit hereto,
4 the terms of this Stipulation will prevail.

5 45. This Stipulation may not be modified or amended, nor may any of its
6 provisions be waived except by a writing signed by all Parties hereto or their successors-
7 in-interest.

8 46. The Parties to this Stipulation intend the Settlement to be a final and
9 complete resolution of all disputes asserted or which could be asserted by the Lead
10 Plaintiffs and the Settlement Classes Members against any of the Released Parties with
11 respect to the Released Claims. Accordingly, the Judgment will contain a finding that at
12 all times each of the Parties and his, her, its, or their counsel has complied fully with Rule
13 11 of the Federal Rules of Civil Procedure in connection with the maintenance,
14 prosecution, defense and settlement of the Action. Lead Plaintiffs and Greenberg further
15 agree not to make any public statements that contradict such position.

16 47. The Parties to this Stipulation agree that the amount paid and the other terms
17 of the Settlement were negotiated at arm's-length in good faith by the Parties, and reflect a
18 settlement that was reached voluntarily based upon adequate information and after
19 consultation with experienced legal counsel.

20 48. The waiver by one Party of any breach of this Stipulation by any other Party
21 will not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

22 49. This Stipulation, its exhibits and the Supplemental Agreement constitute the
23 entire agreement among these Parties with respect to the Settlement and supersede all
24 prior and/or contemporaneous arrangements, oral and/or written agreements and/or
25 discussions or negotiations between or among the Parties or their agents or attorneys. No
26 promise, representation or warranty by any Party, or attorney or agent of any Party,
27 regarding the Settlement that is not expressly contained or referred to in this Stipulation,
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1 its exhibits and the Supplemental Agreement will be valid or binding on that Party. The
2 Parties have included this paragraph to preclude the introduction of parole evidence to
3 vary, interpret, supplement or contradict the terms of this Stipulation.

4 50. This Stipulation may be executed by electronic signature (as indicated by an
5 "s/"), and in one or more counterparts, including by signature transmitted via facsimile, or
6 by a .pdf/.tiff image of the signature transmitted via e-mail. All executed counterparts and
7 each of them will be deemed to be one and the same instrument.

8 51. The Parties and their respective counsel agree that they will use their best
9 efforts to obtain all necessary approvals of the District Court required for the Settlement
10 by this Stipulation.

11 52. Each counsel signing this Stipulation represents that such counsel has
12 authority to sign this Stipulation on behalf of each of their respective clients.

13 53. This Stipulation will be binding upon and will inure to the benefit of the
14 successors and assigns of the Parties hereto, including any and all Released Parties and
15 any corporation, partnership, or other entity into or with which any Party hereto may
16 merge, consolidate or reorganize. No assignment will relieve any Party hereto of
17 obligations hereunder.

18 54. Notices required by this Stipulation will be submitted both (1) by email and
19 (2) either by (a) any form of overnight mail or (b) in person to:

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21 Andrew S. Friedman
22 BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
23 2901 N. Central Avenue, Suite 1000
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26 *March 15, 1995; and the RB Litigation Class*

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Notice will be deemed effective upon sending the notice as described in this paragraph.

55. The administration, consummation and enforcement of the Settlement as embodied in this Stipulation will be under the authority of the District Court, and the Parties intend that the District Court retain jurisdiction for the purpose of entering orders, providing for approval of attorneys' fees and expenses to Class Counsel, and enforcing the terms of this Settlement and this Stipulation.

56. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, will be governed by the internal laws of the State of Arizona without regard to conflicts of laws, except to the extent that federal law requires that federal law governs.

57. This Stipulation will not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

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Dated: June 20, 2012

BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.

By s/ Andrew S. Friedman
ANDREW S. FRIEDMAN
*Attorneys for Lead Plaintiffs Fred C.
Hagel and Jacqueline M. Hagel
Revocable Living Trust Dated March 15,
1995; Judith A. Baker*

Dated: June 20, 2012

TIFFANY & BOSCO, P.A.

By s/ Richard G. Himelrick (with permission)
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Trust Dated December 2, 1994; Honeylou
C. Reznik; The Morris Reznik and
Honeylou C. Reznik Trust;
Jewel Box Loan Company, Inc.; Jewel
Box, Inc.; H-M Investments, LLC*

Dated: June 20, 2012

WILLIAMS & CONNOLLY LLP

By s/ Kevin M. Downey (with permission)
Kevin M. Downey
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Certificate of Service

I hereby certify that on June 20, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Nancy Varner
Legal Secretary