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4 Receiver
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 vs.

15 DIVERSIFIED LENDING GROUP,
16 INC.; APPLIED EQUITIES, INC.; and
BRUCE FRIEDMAN,

17 Defendants,

18 and

19 TINA M. PLACOURAKIS,

20 Relief Defendant.

) Case No. CV 09-01533-R (SSx)

) **RECEIVER'S EX PARTE**
) **APPLICATION FOR**
) **AUTHORITY TO EXCHANGE**
) **CERTAIN ASSETS FOR**
) **MEMBERSHIP INTEREST IN A**
) **LIMITED LIABILITY COMPANY**
) **TO FACILITATE THE SALE OF**
) **FINISHED LOTS IN LINVILLE,**
) **NORTH CAROLINA;**
) **DECLARATIONS OF GLENN**
) **GOLDAN, DAVID A. GILL, AND**
) **GILBERT MIKALIAN**

) [No hearing requested]

21 **PLEASE TAKE NOTICE THAT** David A. Gill, the Permanent Receiver
22 ("**Receiver**") of Diversified Lending Group, Inc. ("**Diversified**"), and Applied
23 Equities, Inc., and their subsidiaries and affiliates, in the above-captioned case, will
24 and hereby applies to the Court for an order granting *Receiver's Ex Parte Application*
25 *for Authority to Exchange Certain Assets for Membership Interest in a Limited*
26 *Liability Company to Facilitate the Sale of Finished Lots in Linville, North Carolina*
27 ("**Application**").
28

1 **Summary of Proposed Transaction**

2 As Receiver I hold an approximate 36.11% interests in a certain real property
3 development in Linville, County of Avery, North Carolina. The development
4 consists of a golf course, a residential tract of lots, and unimproved property in
5 various states of development. The development is essentially controlled by ReProp
6 Financial Mortgage Investors, LLC ("**RFMI**"), which holds a majority interest in all
7 of the property except approximately 37 finished lots, which I own in fee, but which
8 cannot be marketed separately. RFMI and I have been unable to sell any of the
9 property despite many approaches and attempts. To develop the project we need
10 initially to finish and maintain the golf course, as to which this court has permitted
11 me to join in a lease option transaction.¹ As we cannot afford to carry the inventory
12 of property on hand, we need next to sell certain finished lots, including those owned
13 by me, in a retail program, which must comply with HUD regulations. This is
14 intended to develop funds to repay our out of pocket advances, including my
15 proposed cash contribution, and finance marketing of the balance of the
16 development. For the reasons stated in the Application, it is to the benefit of the
17 receivership estate to sell the Finished Lots through an intermediate entity to be
18 formed. By this Application I am seeking Court authority to exchange my present
19 ownership interest in said Finished Lots and to invest up to \$175,000 cash to pay
20 necessary expenses, for a corresponding (36.11%) membership interest in a new
21 North Carolina limited liability company ("**RDLG LLC**") to be formed for the
22 specific purpose of owning, marketing and selling all Finished Lots. By and through
23 an operating agreement ("**Operating Agreement**"), RDLG LLC will be formed by
24 RFMI and the receivership estate of Diversified and it, with the assistance of

25 _____
26 ¹ See this Court's *Order Approving Receiver's Ex Parte Application Grant of Option to Purchase*
27 *Real Property of Receiver Held Jointly with ReProp Financial Mortgage Investors, LLC, to*
28 *Linville Fall Golf Group, LLC*, entered May 27, 2010 [ECF Doc. No. 205]. The golf course is
being operated but the purchase option has not yet been exercised.

1 marketing and sale professionals, will market and hopefully sell approximately 100
2 of the Finished Lots. RDLG LLC through the Operating Agreement, will establish,
3 inter alia, sales and compensation procedures, facilitate retail sales, limit estate
4 liability to purchasers under HUD regulations and other third parties, and avoid the
5 need to continually return to this Court for sales and pricing approvals. At this time I
6 will retain my other interests in the investment but may at a later time seek
7 permission to transfer them into this entity; however, I deem it imprudent to do so at
8 this time. Under the Operating Agreement, I retain veto rights on all significant
9 transactions by RDLG LLC.

10 Summary of Facts

11 As Receiver of Diversified, I am the owner of a 36.11% interest in a resort-
12 style residential development known as the Linville Falls Mountain Club and
13 Preserve ("**Linville Development**") together with RFMI, which holds the remaining
14 interest of 63.89%. I acquired that interest by foreclosing on a debt owed to
15 Diversified. As Receiver, I hold the minority interest in the Linville Development
16 and by reason thereof have deferred to RFMI in the management and operation of the
17 components of the Linville Development. The Linville Development includes
18 approximately 102 lots which have been improved with roads, utilities and other site
19 improvements ("**Finished Lots**"), 100 of which are slated for immediate sale.² I hold
20 fee title to approximately 37 of the Finished Lots, and RFMI owns the balance. The
21 Linville Development also includes a golf course, driving range and related
22 structures ("**Golf Course**")³ and approximately 146 acres of subdivided but
23

24 ² RFMI and I are currently reviewing a lot survey prepared for us to identify the Finished and
25 Unfinished Lots, and this number may be increased or decreased by one or two lots if the survey
26 does not reconcile with the records obtained by RFMI and me from the former owner. The two
27 remaining lots are not being marketed due to issues concerning the state of title. RFMI and I are
28 working to clear title on those two lots.

³ See footnote 1, *supra*.

1 unimproved lots ("**Unfinished Lots**"). In addition, it includes a 7.46 acre
2 unimproved parcel ("**Raw Land**").

3 RFMI and I have determined that it is prudent and appropriate to form a
4 limited liability company to own and sell the Finished Lots. Attached as Exhibit "1"
5 to my declaration is a true and correct copy of the proposed Operating Agreement.
6 RFMI and I are of a view that the formation of RDLG LLC is necessary for, among
7 other things, sales and compensation procedures, facilitate retail sales, limit estate
8 liability to purchasers under HUD regulations and other third parties, and avoid the
9 need to continually return to this Court for sales and pricing approvals. Further, the
10 formation of RDLG LLC will fix the duties and obligations as between RFMI and
11 me in connection with the ownership and sale of the Finished Lots.

12 **Relief Requested**

13 The Application requests an order:

- 14 1. authorizing me as the Receiver to contribute Diversified's 36.11%
15 ownership interest of the Finished Lots and up to \$175,000 in cash to fund operations
16 and sale preparation costs in exchange for a corresponding 36.11% membership
17 interest in RDLG LLC;
- 18 2. authorizing me as the Receiver to execute all documents and otherwise
19 take all actions that I deem necessary and appropriate to effectuate the organization
20 and operation of RDLG LLC as set forth in the Operating Agreement, a copy of
21 which is attached as Exhibit "1" to my declaration; and
- 22 3. confirming that the form and manner of notice of the Application
23 provided by me is appropriate. A copy of the proposed order is attached as Exhibit
24 "2" to my declaration.

25 **Underlying Facts**

26 The Application is based upon the following: Diversified was, and as
27 Receiver I now am, a minority owner of the Linville Development, a resort golf
28 community, RFMI being the majority owner. Part of the Linville Development is

1 comprised of approximately 102 Finished Lots. The Golf Course is now operating⁴
2 and RFMI is in the final stages of obtaining HUD approval for the subdivision report,
3 which is a prerequisite to a sale of the Finished Lots. The Finished Lots, with some
4 pre-sale preparation, will be ready to be marketed and sold in order for the
5 Receivership estate to maximize and monetize its interest in the Finished Lots.
6 Diversified, subject to Court approval, along with RFMI have formed RDLG LLC
7 and have entered into the Operating Agreement for the purpose of ownership,
8 marketing and sale of the Finished Lots. Without limiting the terms and conditions
9 in the Operating Agreement, and as more fully set out therein, subject to Court
10 approval, I thereby agree to contribute my 36.11% ownership interest in the Finished
11 Lots and pay to RDLG LLC up to \$175,000 in cash for a corresponding 36.11%
12 membership interest in RDLG LLC. Diversified's initial cash contribution will total
13 \$72,220.00 and RFMI is also contributing its entire 63.89% ownership interest in the
14 Finished Lots and up to approximately \$256,000 in cash. Pursuant to the Operating
15 Agreement, with the approval of RFMI and me, the initial cash distributions may be
16 repaid out of the first available sales proceeds.⁵

17 The Application is made on the grounds that as Receiver I have determined in
18 my business judgment that the formation of RDLG LLC is necessary to establish
19 sales and compensation procedures, facilitate retail sales, limit estate liability to
20 purchasers under HUD regulations and other third parties, and avoid the need to
21 continually return to this Court for sales and pricing approvals. The formation of
22 RDLG LLC will also fix the duties and obligations as between RFMI and me as the
23 Receiver in the ownership and sale of the Finished Lots.

24 The Application is based upon this Notice, the Application, the Memorandum
25 of Points and Authorities, the Declarations of Glenn Goldan, David A. Gill, and

26 ⁴ Pursuant to a lease option agreement previously approved by the Court, see footnote 1, *supra*.

27 ⁵ See Exhibit 1 to the Declaration of David A. Gill (Operating Agreement) at ¶ 7.08.
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1 Gilbert Mikalian, and upon such other evidentiary matters as may be considered by
2 the Court.

3 **PLEASE TAKE FURTHER NOTICE** that pursuant to the prior order of this
4 Court entered May 4, 2009, the proposed notice and Application were served upon
5 the approved Limited Service List on June 18, 2010, and the Notice was posted on
6 the website www.diversifiedreceivership.com, as reflected in the Declaration of
7 Gilbert Mikalian. No opposition has been received.

8 **PLEASE TAKE FURTHER NOTICE** that pursuant to the Omnibus Order
9 this Notice and Application will be served upon the approved Limited Service List
10 and will be posted on the website www.diversifiedreceivership.com.

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12 Dated: June 21, 2010

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15 DAVID A. GILL, RECEIVER
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Diversified Lending Group, Inc. ("**Diversified**"), holds a minority ownership interest in a residential golf course development project located at Linville, North Carolina (the development project is referred to as the "**Linville Development**"). Linville is a resort and retirement community in the Blue Ridge Mountains near Asheville, North Carolina. The Linville Development and ownership interests therein are as follows:

1. a 159-acre golf course and driving range complex with associated buildings ("**Golf Course**"), in which ReProp Financial Mortgage Investors, LLC ("**RFMI**") holds a 63.89% interest and Diversified holds a 36.11% interest, each as tenants in common, which percentage interests are the same as the ratio of the funds lent by each;

2. a residential housing tract of approximately 102 lots covering approximately 112 acres.⁶ RFMI holds title to 65 lots and Diversified holds sole title to 37 lots ("**Finished Lots**");⁷

3. 146 acres of unimproved property that have been subdivided in to 146 lots ("**Unfinished Lots**") in which RFMI holds a 63.89% interest and Diversified holds a 36.11% interest; and

4. a parcel of unimproved property of approximately 7.46 acres ("**Raw Land**") in which RFMI holds a 63.89% interest and Diversified holds a 36.11% interest.

Diversified, subject to Court approval, and RFMI propose to form and fund RDLG LLC ("**RDLG LLC**") for the purpose of owning, marketing and selling the

⁶ See footnote 1, *supra*.

⁷ Diversified also has a lien against another Finished Lot and I have initiated foreclosure, but as yet, title has not been conveyed to me as Receiver.

1 Finished Lots. Specifically, Diversified seeks court authority to contribute to RDLG
2 LLC its 36.11% ownership interest in the Finished Lots and up to \$175,000 in cash,
3 and in exchange, Diversified is to receive a 36.11% membership interest in RDLG
4 LLC. The cash contribution is to be repaid from the first available sales proceeds.⁸

5 **II.**

6 **RELEVANT FACTS**

7 **A. Facts Relating to Diversified's Investment in The Linville**
8 **Development.**

9 As a result of my investigation, I learned that on or about June 29, 2007,
10 Diversified and RFMI loaned CVG II, LLC ("CVG"), an aggregate of \$3.6 million
11 for the purchase of the Linville Development. Diversified and RFMI received as
12 collateral for their loans first priority real estate liens on the Linville Development.
13 CVG defaulted on the loan, and after many months of attempting to reach terms for a
14 consensual workout, including my efforts after being appointed Receiver, and many
15 months of litigation including a Chapter 11 bankruptcy filing by CVG, RFMI and I,
16 as Receiver of Diversified, foreclosed and ultimately received trustee's deeds after
17 foreclosures. Accordingly, as Receiver of Diversified, I own a 36.11% ownership
18 interest in the Linville Development with RFMI holding the remaining 63.89%
19 ownership interest.

20 **B. Facts Relating to the Marketing and Sale of the Finished Lots.**

21 Part of the Linville Development consists of approximately 102 Finished Lots.
22 Of the possible 102 Finished Lots available for sale, Diversified owns 37 Finished
23 Lots, with another lot subject to Diversified's foreclosure action to recover same.

24 RFMI, as the majority interest holder in the Linville Development, has with
25 my consent actively marketed the Linville Development since December 2009 and
26 before. We originally sought a bulk purchaser to acquire the entire Linville

27 ⁸ See footnote 5, *supra*.

1 Development, since neither RFMI nor I have the personnel or the resources to
2 operate a golf course and to develop, market and sell the other properties in the
3 Linville Development. Due to the lack of an acceptable offer, in March 2010, RFMI
4 and I reached the inescapable conclusion that Linville Development would not
5 generate a bulk purchaser, and as a result, we have had to explore other options to
6 obtain recovery.

7 As mentioned above, the Linville Development was and has been improved as
8 a golf course community. Recently, Diversified and RFMI identified a willing golf
9 course operator to rehabilitate and operate the Golf Course to not only provide a
10 benefit to the existing residents in the area, but to enhance the value for the sale of
11 the surrounding Finished Lots. This Court approved my participation in that
12 transaction.⁹ With an operational Golf Course and the start of the golfing season in
13 the area, RFMI and I are acting quickly to market and sell the Finished Lots, which
14 are anticipated to gross as much as \$4 to 5 Million in sales, the current depressed real
15 estate market notwithstanding.

16 As Receiver, I have determined in my business judgment that the formation of
17 RDLG LLC is necessary to establish the sales and compensation procedures,
18 facilitate retail sales, limit estate liability to purchasers under HUD regulations and
19 other third parties, and avoid the need to continually return to this Court for sales and
20 pricing approvals. Further, the formation of RDLG LLC will fix the duties and
21 obligations as between RFMI and me as Receiver in the ownership and sale of the
22 Finished Lots. A copy of RDLG LLC's operating agreement ("**Operating**
23 **Agreement**") is attached as Exhibit "1" to the declaration of David A. Gill in support
24 of the instant Application. To that end, and with the realization that neither RFMI
25 nor I possess the expertise or are in a position to expend the significant resources
26 necessary for the aggressive and effective marketing and sale of the Finished Lots,

27 ⁹ See footnote 1, *supra*.

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1 the search for a firm experienced in the marketing and sale of distressed real property
2 resulted in the identification of a suitable marketing firm.

3 After formation, RDLG LLC will undertake to complete certain pre-sale
4 improvements to the Finished Lots and then it will retain the marketing firm to hold
5 an intense and vigorous sale event over the last weekend of July or early August
6 2010.

7 **C. Terms of RDLG LLC's Operating Agreement.**

8 Without limiting, altering or augmenting the terms of the Operating
9 Agreement, which terms are incorporated herein by this reference, pertinent terms of
10 the Operating Agreement are as follows:

11 For its 36.11% membership interest in RDLG LLC, as Receiver of Diversified,
12 subject to Court approval, I will make the following capital contributions: (1) all of
13 Diversified's 36.11% ownership interest in the Finished Lots and (2) up to \$175,000
14 in cash. For its 63.89% membership interest in RDLG LLC, RFMI will make the
15 following capital contributions: (1) all of RFMI's 63.89% ownership interest in the
16 Finished Lots and (2) up to approximately \$256,000 in cash. Effectively, the
17 agreement provides me with a veto over all significant transactions, as 75% is
18 required for same.

19 With respect to the authority of the members under the Operating Agreement,
20 to which I retain veto rights relative to significant transaction, that document states:

21 **[§] 4.05 Authority.** Subject to restrictions that may be
22 imposed from time to time by the Members, each Manager shall
23 be an agent of the LLC with authority to bind the LLC in the
24 ordinary course of its business and shall have authority to control
25 the LLC's day-to-day operations. Notwithstanding the forgoing,
26 the approval of the Members holding at least seventy five percent
27 (75%) of the Units Eligible to Vote will be required in order to
28 approve:

1 (a) the sale of substantially all of the assets of the LLC (the
2 sale of individual lots at an average gross sales price of \$55,000
3 per lot does not constitute a sale of substantially all of the assets
4 of the LLC for the purposes of this Section 4.05) ;

5 (b) the hypothecation of any asset or assets of the LLC;

6 (c) the borrowing of money in any amount or the incurrence
7 of a debt or other obligation that has a liability in excess of
8 \$50,000;

9 (d) the merger of the LLC with another entity, regardless of
10 whether the LLC will or will not be the surviving entity;

11 (e) the voluntary dissolution of the LLC;

12 (f) any material and adverse change in the rights,
13 preferences or privileges of the Units;

14 (g) the creation of any new class of membership units
15 having preference over or being on a parity with the Units;

16 (h) any redemption of Units other than as provided for in
17 this Operating Agreement;

18 (i) any salaries or bonus formulae for the LLC's Managers
19 and employees and any changes thereto; or

20 (j) the election or removal of a Manager.

21 Additionally, with respect to profits or losses resulting from the business activities of
22 RDLG LLC, the Operating Agreement states: "**[§]7.01 Allocation of Net Profit**
23 **and Loss.** Except as may be required by [Internal Revenue Code] § 704 and the
24 Treasury Regulations thereunder, net profits, net losses, and other items of income,
25 gain, loss, deduction, and credit shall be apportioned among holders of Units in
26 proportion to their Units."

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1 Because one of the primary reasons for the formation of the RDLG LLC is for
2 the minimization of liability for the receivership estate and its creditors, the
3 Operating Agreement also contains the following provisions:

4 **[§] 9.01 Indemnification.** The LLC shall indemnify
5 each of its Managers to the fullest extent permissible under
6 North Carolina law, as the same exists or may hereafter be
7 amended, against all liability, loss and costs (including,
8 without limitation, attorneys' fees) incurred or suffered by
9 such person by reason of or arising from the fact that such
10 person is or was a Manager of the LLC. The LLC may, by
11 written action of the Members or Managers, provide
12 indemnification to any employee or agent of the LLC who
13 is not a Manager. The indemnification provided in this
14 section shall not be exclusive of any other rights to which
15 any person may be entitled under any statute, bylaw,
16 agreement, resolution of Members or Managers, contract,
17 or otherwise.

18 **9.02 Limitation of Liability.** Any Manager of the LLC
19 shall not be liable to the LLC or its Members for monetary
20 damages for conduct as Manager except to the extent that
21 the North Carolina Limited Liability Company Act, as it
22 now exists or may hereafter be amended, prohibits
23 elimination or limitation of Manager liability. No repeal or
24 amendment of this section or of the North Carolina Limited
25 Liability Company Act shall adversely affect any right or
26 protection of a Manager for actions or omissions prior to
27 the repeal or amendment.
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III.

**THIS APPLICATION MAY BE FILED AND
DETERMINED ON AN EX PARTE BASIS**

Pursuant to the instructions of this Court, I am applying for authorization to transfer assets of the Receivership in exchange for membership interest in RDLG LLC, for the ownership, marketing and sale of the Finished Lots on an ex parte basis in order to maximize efficiency for both the Court and the receivership estate. Additionally, the need to sell the Finished Lots on an expedited basis is necessary in order to conserve associated carrying costs. The immediate need to sell the Finished Lots is also crucial to obtaining maximum value for the Finished Lots given the seasonal nature of the lots since they are an integral part of a golf community. Accordingly, this Application may properly be brought before the Court on an ex parte basis.

IV.

**IT IS APPROPRIATE THAT THE COURT APPROVE
THE TRANSFER OF CERTAIN ASSETS FOR THE
FORMATION OF RDLG LLC**

**A. The Receiver Should Be Authorized to Transfer Certain Property
of the Estate.**

In order to fund RDLG LLC, I propose to contribute all of the Receivership's rights, title and interest in the Finished Lots without representations or warranty. Additionally, I propose to seek authority to contribute up to \$175,000 in cash in order to provide for the receivership estate's minority share of the pre-sale preparations, marketing and sale of the Finished Lots. I have more than sufficient cash to fund this payment. Accordingly, I seek approval of the Court in order to make these contributions for the purpose of monetizing and insulating the Receivership's interest in the Finished Lots. RFMI and I are of a view that the

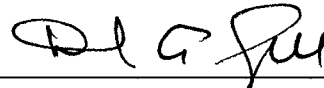
1 formation of RDLG LLC is necessary to establish sales and compensation
2 procedures, facilitate retail sales, limit estate liability to purchasers under HUD
3 regulations and other third parties, and avoid the need to continually return to this
4 Court for sales and pricing approvals. Further, the formation of RDLG LLC will fix
5 the duties and obligations as between RFMI and the Receiver in the ownership and
6 sale of the Finished Lots. Accordingly, it is appropriate for me, as Receiver for
7 Diversified, to exchange certain assets of the receivership estate for a corresponding
8 membership interest in RDLG LLC.

9 V.

10 **CONCLUSION**

11 Based upon the foregoing, as Receiver I respectfully request approval of this
12 Application, the authority to transfer certain Receivership assets for the formation of
13 RDLG LLC, and all other appropriate relief.

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15 Dated: June 21, 2010

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18 DAVID A. GILL, RECEIVER
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DECLARATION OF DAVID A. GILL

I, David A. Gill, declare as follows:

1. I am the Permanent Receiver appointed by this Court for Diversified Lending Group, Inc., and Applied Equities, Inc., pursuant to the Order of Preliminary Injunction and Orders: (1) Continuing Asset Freeze, (2) Appointing a Permanent Receiver, (3) Prohibiting the Destruction of Documents, (4) Granting Expedited Discovery, and (5) Requiring Accountings, signed and entered by this Court on March 10, 2009.

2. This declaration is made in support *Receiver's Ex Parte Application for Authority to Exchange Certain Assets for Membership Interest in a Limited Liability Company to Facilitate the Sale of Finished Lots in Linville, North Carolina*. I have read the Application and the companion Declaration of Glenn Goldan and know its contents. I hereby adopt and incorporate all facts stated in the Application and the Declaration of Glenn Goldan herein. I have caused to be prepared an order in conformity with this Application which is attached hereto as Exhibit "2."

3. Unless stated otherwise, I have personal knowledge of the facts in this declaration and, if called as a witness, I could competently testify to these facts. Furthermore, capitalized terms used herein have the same meaning as such terms are given in the Application.

4. On May 25, 2010, I filed *Receiver's Ex Parte Application to Approve His Grant of an Option to Purchase and to Sell Real Property Held Jointly with, ReProp Financial Mortgage Investors, LLC, and Linville Falls Golf Group, LLC; Declarations of Glenn Goldan, David A. Gill, and Gilbert Mikalian* [ECF Doc. No. 204] ("**Option to Purchase Application**"). In that application Mr. Goldan and I detailed the history of the respective investments by RFMI and Diversified and the status of our efforts to market and sell the various components of real property constituting the Linville Development. I will not repeat that material but adopt it by

1 reference herein as though set forth in full. On May 27, 2010, the Court entered an
2 order [ECF Doc. No. 205] granting the Option to Purchase Application.

3 **Original Transaction**

4 5. I am informed that in June 2007, at the peak of the housing bubble,
5 RFMI and Diversified lent an aggregate of \$3.6 Million to CVG so that it could
6 purchase and rehabilitate an operating 18 hole golf course, with driving range and
7 clubhouse, surrounded by a residential golf course community development
8 comprised of finished and unfinished lots in the resort area of the Blue Ridge
9 Mountains at Linville Falls, North Carolina. Of the funds lent, \$2.3 million was
10 from RFMI and \$1.3 million was from Diversified.

11 6. I am informed that Diversified and RFMI entered into an Inter-creditor
12 Agreement describing the rights and obligations of the two parties as to the loan and
13 the collateral: it was agreed that Diversified would hold title to 36.11% of the
14 Finished Lots or in other words about 37 of the total of 102 Finished Lots and hold a
15 36.11% interest in the Golf Course, Unfinished Lots, and Raw Land and that RFMI
16 would hold the remaining 63.89% interest.

17 **Default and Foreclosure**

18 7. I am informed that the loan went into default and ultimately
19 Diversified and RFMI initiated private sale foreclosure proceedings against CVG in
20 December 2008, prior to my appointment as Receiver on March 4, 2009. Ultimately,
21 RFMI and Diversified obtained title to its collateral with the interests apportioned as
22 described in the preceding paragraph.

23 **Marketing and Development Efforts**

24 8. RFMI's estimate of the fair market value of the Finished Lots, in view
25 of the current economy, the need for further clean up and sale preparation work at
26 most if not all Finished Lots, the lack of an on site developer and on site
27 management, among other things, is in a range of \$45,000 to \$65,000 average for
28 all the lots. The Golf course has re-opened for business and I am informed its

1 condition is much improved creating some good will in the community, and thus Mr.
2 Goldan believes that a midrange value of \$55,000 per Finished Lot is appropriate.
3 Based upon the information provided by Mr. Goldan, I concur. I am satisfied that it
4 is almost impossible to obtain an accurate appraisal of the Finished Lots given the
5 unique circumstances. In any event, an appraisal likely could not be obtained in
6 sufficient time to permit marketing before the projected sales event of late July or
7 early August.

8 9. Sale of the Finished Lots and development of the Unfinished Lots is
9 inextricably and understandably intertwined with the operations of the Golf Course.
10 Mr. Goldan and I had hoped to be able to market and sell the Golf Course and other
11 properties in bulk. Unfortunately, notwithstanding extensive marketing over more
12 than three months, no acceptable offer was received. See Declaration of Glenn
13 Goldan submitted herewith. We are thus required to pursue other alternative
14 disposition models.

15 **Circumstances Requiring Immediate Marketing and Sale of the Finished Lots**

16 10. I am informed by my other representatives as well as by Mr. Goldan,
17 and believe, that in order to realize value in the near future from the Finished Lots,
18 the Finished Lots need to be intensely marketed and there needs to be a qualified
19 staff of a large number of people to sell and process sells of such a large number of
20 lots. Furthermore, if this project were marketed as a new development under
21 traditional methods, I could expect the marketing and sale program to take at least a
22 year to sell all or most of the Finished Lots. Of course, the marketing and the sale
23 process would require the expenditure of substantial funds over this lengthy period of
24 time, funds I do not believe it produce to advance. Without such an infrastructure
25 and financial support, the Finished Lots must be viewed as distressed properties
26 rather than as a sale or a series of sales of conventional real properties. .

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1 11. As Receiver and minority interest holder I am not in a position to
2 advance significant funds, nor to undertake management of operations of the Linville
3 Development nor, I am informed, is RFMI.

4 **Sale of the Finished Lots**

5 12. The marketing of the Finished Lots is dependent upon obtaining
6 approvals from the Department of Housing and Urban Development ("HUD") and
7 this effort has required a substantial outlay of time and money. RFMI and I expect to
8 obtain such HUD approval by the end of June 2010. Based upon the information
9 provided by Mr. Goldan and the proposed sales agents, the Finished Lots could
10 generate as much as \$5.2 Million, net of development and marketing costs, which
11 could translate into as much as \$1.8 Million available for the estate before
12 adjustments for such expenses as may be advanced by RFMI. Of course, this is a
13 speculative estimate, but even if it were half that it would be of benefit to the estate
14 and its creditors. Neither I nor, to my knowledge, RFMI or its principal have any
15 prior connection to the proposed sales agent or any of its employees known to us.

16 13. I believe, based on my business judgment, that it is necessary to form,
17 along with RFMI, RDLG LLC for the efficient marketing and sale of the Finished
18 Lots and to establish sales and compensation procedures, facilitate retail sales, limit
19 estate liability to purchasers under HUD regulations and other third parties, and
20 avoid the need to continually return to this Court for sales and pricing approvals.
21 Further, the formation of RDLG LLC will fix the duties and obligations as between
22 RFMI and me with respect to the ownership and sale of the Finished Lots. A copy of
23 the Operating Agreement setting forth the rights, authorities, and obligations of DLG
24 and RFMI is attached hereto as Exhibit "1."

25 14. I am informed by Mr. Goldan that sales related expenses are estimated
26 to be approximately \$440,500, an itemized description of which is attached as
27 Exhibit "3" to the Declaration of Glenn Goldan in support of the Application.
28 Accordingly, in addition to seeking approval to transfer all of my 36.11% ownership

1 interest in the Finished Lots, I am also seeking approval to contribute up to \$175,000
2 cash in order to adequately fund RDLG LLC for all expenses related with the sale of
3 the Finished Lots and to account for unanticipated cost overruns.

4 15. The Operating Agreement effectively provides me with a veto over all
5 significant transactions, as 75% is required for same.

6 16. Accordingly, I recommend and request the Court grant my application
7 and authorize me to exchange certain assets of the receivership estate for
8 membership interests in RDLG LLC for the purpose of owning, marketing and
9 selling the Finished Lots, pursuant to the terms and conditions set forth in the
10 Operating Agreement.

11

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

14 Executed at Los Angeles, California, on June 21, 2010.

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DAVID A. GILL

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1 **DECLARATION OF GLENN GOLDAN**

2 I, Glenn Goldan, declare as follows:

3 1. I am the President and Chief Executive Officer of ReProp Investments,
4 Inc., the manager of RFMI. I am over the age of 18 years and am competent to make
5 this declaration. The matters stated herein are based upon my personal knowledge
6 except those matters stated as on information or belief. I have read the Application
7 to which this declaration is attached and the companion declarations of David A.
8 Gill, Receiver and Chip Leonard.

9 2. This declaration is made in support of *Receiver's Ex Parte Application*
10 *for Authority to Exchange Certain Assets for Membership Interest in a Limited*
11 *Liability Company to Facilitate the Sale of Finished Lots in Linville, North Carolina.*

12 3. I will not repeat my background or experience since that information as
13 well as the history of the loan and events that lead up to RFMI and Diversified
14 obtaining title to the Linville Development is covered in my declaration filed May
15 25, 2010, in support of *Receiver's Ex Parte Application to Approve His Grant of an*
16 *Option to Purchase and to Sell Real Property Held Jointly with, ReProp Financial*
17 *Mortgage Investors, LLC, and Linville Falls Golf Group, LLC; Declarations of*
18 *Glenn Goldan, David A. Gill, and Gilbert Mikalian* [ECF Doc. No. 204].

19 Furthermore, capitalized terms used herein have the same meaning as such terms are
20 given in the Application.

21 **Sales Activity & Strategy for the Linville Development**

22 4. As I have previously stated, since well before obtaining title to the
23 Linville Development, RFMI and Diversified (collectively "**Lender**") envisioned as
24 its marketing strategy a bulk sale of the assets to a buyer. Lender worked through a
25 number of leads over a span of months but only one entity expressed sufficient
26 interest to make a proposal. Through discussions lead by RFMI, Lender did get one
27 Letter of Interest from Advisco Capital Corporation at a price of \$3 Million calling
28 for unspecified profit and equity sharing. RFMI terminated the discussions after

1 further negotiations yielded no progress.

2 **Pricing and Marketing of Finished Lots**

3 5. With the responsibility for the Golf Course shifted to a third party, I
4 have been devoting my attention to obtaining HUD approval for the sale of the
5 Finished Lots and identifying a sales agent to market and sell the Finished Lots.
6 Substantial progress in this area has been made and we expect to have HUD
7 approval to sell the Finished Lots by the end of June 2010.

8 6. I sought advice from several mountain resort development specialists. I
9 also interviewed three Southeast firms specializing in resort sales. Based on my
10 research, I concluded that a retail market for mountain golf resort lots in the
11 Southeast is at a price point between \$45,000 and \$125,000 where financing is made
12 available to credit worthy purchasers, depending on location, lot size, amenities, and
13 other similar factors. The principal caveats to any retail sale of golf course lots is
14 that the development has a well maintained golf course, is attractive, and the lots
15 sales are well staged and marketed.

16 7. Based upon such factors described above, I have concluded that the
17 market value of the Finished Lots is in the range of between \$45,000 and \$65,000 per
18 lot. In light of the improvements to the Golf Course and its current operations, and
19 assuming we are able to retain experienced and motivated sales force to market the
20 Finished Lots and conduct a sales event in late July or early August, the peak of the
21 summer, it now appears that an average value of \$55,000 per lot is achievable.

22 8. Given Lender's own approximately 102 Finished Lots (as it now
23 appears from a recent survey), plus or minus one or two lots, with another lot still in
24 the process of foreclosure, a sale event where lots were sold at the low end of the
25 range at an average of \$45,000 per lot, assuming 96 or so of the 102 Finished Lots
26 are brought to market with consummated sales of not less than 80 of the lots would
27 yield \$4.04 Million with net proceeds after all dress up and sales cost, including
28 marketing and sale fees, of about \$2.64 Million for Lender, a prospect worthy of

1 further effort. I believe but do not warrant that the range of net sales proceeds
 2 available for allocation between the Receiver and RFMI are approximately as
 3 follows given various price scenarios:

4 80 Lots Sold	\$55,000 Avg. Sales Price	\$60,000 Avg. Sales Price	\$65,000 Avg. Sales Price
5 Gross Proceeds	\$4.04 Million	\$4.80 Million	\$5.20 Million
6 Net Proceeds	\$2.64 Million	\$2.88 Million	\$3.12 Million

8 8. Lender has looked at the various marketing models of a project of this
 9 nature. Typically, similar lot sale developments retain an in-house marketing team
 10 and on-sight sales office. The property is advertised week in and week out and the
 11 sales will take place over many months. A large developer could spread the sales
 12 force expenses over more than one development. Lender lacks the funding
 13 mechanism, structure and expertise to perform large scale resort marketing in the
 14 Southeast. Other various marketing options have been considered and after
 15 negotiations over a number of weeks with RPM of Knoxville, Tennessee, we have
 16 agreed on the material terms to market and sell the Finished Lots over a weekend in
 17 late July or early August 2010. A second event may be necessary in the fall.

18 9. RPM has agreed to advance \$425,000 and to vigorously market the
 19 Finished Lots. Neither the Receiver nor RFMI has the funds available to market the
 20 Finished Lots nor do they have an infrastructure of dozens of people to sell and
 21 process the sales and to walk them through escrow. As an accepted and proven
 22 strategy for the sale of distressed properties in the Southeast, RPM's marketing
 23 strategy is based upon a large volume of mailings and other advertising to bring
 24 purchasers to the Finished Lots over a single weekend, then intensive sale's efforts
 25 and negotiations to bring each prospective purchaser to the table for the execution of
 26 the sales contract. RPM's experience is that the marketing generates large turnouts of
 27 prospective purchases and by having all the buyers congregate at the sale site over a
 28

1 short weekend, an auction mentality is created thus enhancing the prices obtained on
2 sales. This marketing strategy requires a large commitment of personnel and time by
3 RPM, neither of which can be supplied by RFMI or the Receiver.

4 **Formation of a Limited Liability Company**

5 10. I am of the opinion that it is necessary to form RDLG LLC for the
6 preparation, marketing and sale of the Finished Lots to insulate Lenders from
7 liability that may arise by reason of our status as owner. Additionally, the formation
8 of RDLG LLC will establish the rights and obligations as between the Receiver and
9 RFMI in connection with the ownership and sale of the Finished Lots. To that end,
10 RFMI and, subject to Court approval, the Receiver have entered into the Operating
11 Agreement for the formation and operation of RDLG LLC for the primary purpose of
12 owning, preparing for sale, and selling the Finished Lots. A copy of the Operating
13 Agreement is attached to the Declaration of David A. Gill in support of the
14 Application as Exhibit "1."

15 11. In my estimation, the expenses associated with the preparation for sale
16 of the Finished Lots totals approximately \$440,500. Accordingly, in my estimation,
17 RFMI will contribute over \$281,000 to RDLG LLC. Attached hereto as Exhibit "3"
18 is the estimated budget I have prepared based on all information available to me
19 which for the necessary pre-sales event expenses associated with the Finished Lots.

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1 12. In addition to the cash contribution, RFMI will also contribute all of its
2 63.89% ownership interest in the Finished Lots to the formation of RDLG, LLC, as
3 more fully set forth in Exhibit "B" to the Operating Agreement, which document is
4 attached to the Declaration of David A. Gill in support of the Application as Exhibit
5 "1."

6
7 I declare under penalty of perjury under the laws of the United States of
8 America that the foregoing is true and correct.

9
10 Executed at ERIEKA, CALIFORNIA, on June 11, 2010.

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13 _____
14 GLENN GOLDAN

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DECLARATION OF GILBERT MIKALIAN

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3 I, Gilbert Mikalian, declare as follows:

4 1. I am an attorney licensed to practice in California. I am an associate at
5 the law firm of Danning, Gill, Diamond & Kollitz, LLP ("Danning-Gill"). Danning-
6 Gill is the duly employed counsel to David A. Gill, the duly appointed Permanent
7 Receiver for Diversified Lending Group, Inc., and Applied Equities, Inc., pursuant to
8 the Order of Preliminary Injunction and Orders: (1) Continuing Asset Freeze, (2)
9 Appointing a Permanent Receiver, (3) Prohibiting the Destruction of Documents, (4)
10 Granting Expedited Discovery, and (5) Requiring Accountings, signed and entered
11 on March 10, 2009, in *Securities and Exchange Commission v. Diversified Lending*
12 *Group, Inc., et al.*, case number CV 09-01533-R (SSx), pending in the United States
13 District Court, Central District of California (the "**SEC Action**"). I am one of the
14 attorneys at Danning-Gill assigned to represent the Receiver in the SEC Action.

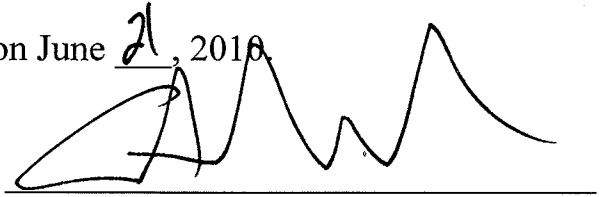
15 2. This declaration is made in support of *Receiver's Ex Parte Application*
16 *for Authority to Exchange Certain Assets for Membership Interest in a Limited*
17 *Liability Company to Facilitate the Sale of Finished Lots in Linville, North Carolina*
18 (the "**Application**"). I have personal knowledge of the facts in this declaration and,
19 if called as a witness, I could competently testify to these facts.

20 3. On June █, 2010, the proposed Notice and Application, including all
21 exhibits attached thereto, were provided to all parties requiring notice in the Limited
22 Service List and the Notice was posted on the website [www.diversifiedreceivership.](http://www.diversifiedreceivership.com)
23 [com](http://www.diversifiedreceivership.com) pursuant to the Notice Procedures as set forth in an order of this Court dated
24 May 4, 2009. The proposed Notice and Application were served electronically on
25 the Limited Service List on June █, 2010. The parties requiring notice in the
26 Limited Service List have been advised that any opposition to the Application must
27 be filed with the Court no later than twenty-four hours after receipt of the filed
28 Application. No opposition has been received.

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

Executed at Los Angeles, California, on June 21, 2010.



Gilbert Mikalian

EXHIBIT 1

**RDLG, LLC
OPERATING AGREEMENT**

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**OPERATING AGREEMENT
OF
RDLG, LLC
a North Carolina Limited Liability Company**

This Operating Agreement (the "Agreement") is made and entered into effective June __, 2010.

**Article I
Formation**

- 1.01 Name. The name of the limited liability company (the "LLC") is RDLG, LLC.
- 1.02 Articles of Organization. Articles of Organization were filed with the North Carolina Secretary of State on June __, 2010.
- 1.03 Duration. The duration of the LLC shall be perpetual.
- 1.04 Principal Place of Business. The principal office of the LLC shall initially be 555 H Street, Eureka, California. The Managers may relocate the principal office or establish additional offices from time to time.
- 1.05 Registered Office and Registered Agent. The LLC's initial registered office shall be at 227 West Trade Street, Suite 1200, Charlotte, NC 28202-1672, and the name of its initial registered agent at such address shall be Rayburn Cooper & Durham, P.A.

**Article II
Members, Contributions and Interests**

- 2.01 Units, Names and Addresses.
- (a) Member interests in the LLC shall be issued in the form of Membership units ("Units"). The LLC initially authorizes one class of units, namely, Class A Voting Units.
- (b) This LLC initially has two Members. The names and addresses of the initial Members, together with the value of the Members' capital contribution and the number of Units owned by the Members are shown below:

<u>Name and Address of Member</u>	<u>Initial Capital Contribution</u>	<u>Initial Class A Units</u>
ReProp Financial Mortgage Investors, LLC	See Exhibit A	6,389
David A. Gill, Receiver in the matter of <i>Securities & Exchange Comm. v. Diversified Lending Group, Inc., et al.</i> , case no. CV 09-01533-R (SSx) in the U.S. District Court for the Central District of California, Western Division ("District Court")	See Exhibit A	3,611

Each Member's ownership interest shall be identified in this Agreement or in the LLC's records but need not be represented by a certificate for the number of membership Units owned by that Member.

2.02 Issuance of Additional Units. The LLC may issue additional Units on terms approved by Members holding at least seventy five percent (75%) of the Units Eligible to Vote. The LLC will use cash capital contributions by new Members for working capital, capital expenditures, payment of, or reimbursement to, the initial Members or Managers of organizational expenses and start-up expenses incurred prior to organization, and provision for contingency reserves.

2.03 Other Business of Members. Except as may be provided in any separate agreement, it is specifically and clearly agreed that a Member may, directly or indirectly, engage in, own an interest in, or act as an officer, director, employee, member, consultant, or advisor to any other business, excepting a business that could be deemed to compete with the LLC directly or indirectly. Each Unit Holder agrees to keep any proprietary information, documents, and records received from the LLC or its Unit Holders confidential and to not disclose such information, documents, and records to third parties other than the Unit Holder's lawyer, accountant, or financial advisor in the course of providing advice to the Unit Holder.

2.04 Additional Contributions. Additional capital contributions shall be accepted from existing Unit Holders only if at least seventy five percent (75%) of the Units Eligible to Vote. approves and sets the maximum total amount of the additional capital contributions. If the Managers do so, the Unit Holders shall have the opportunity (but not the obligation) to make such additional capital contributions on a pro-rata basis in accordance with their Units. If any Unit Holder elects to make less than the Unit Holder's pro-rata share of any additional capital contributions, the others may contribute the difference on a pro-rata basis in accordance with their ownership interests or on any other basis they may agree upon; in such a case, the contributing Unit Holders shall be issued additional Units in the LLC with an issue price per unit equal to the net book value of the LLC (prior to the contributions) as determined by the LLC's regularly employed certified public accountant divided by the total number of outstanding Units.

2.05 No Interest on Capital Contributions. No interest shall be paid on capital contributions.

2.06 Capital Accounts. An individual capital account shall be maintained for each Unit Holder. Each Unit Holder's capital account shall be (a) credited with all capital contributions by such Unit Holder and the Unit Holder's distributive share of all income and gain (including any income exempt from federal income tax), and (b) charged with the amount of all distributions to such Unit Holder and the Unit Holder's distributive share of losses and deductions. Capital accounts shall be maintained in accordance with federal income tax accounting principles as set forth in Treas. Reg. § 1.704-1(b)(2)(iv) or any successor provision.

Article III Member Meetings

3.01 Meetings. A meeting of the Members shall be held (a) if it is called by the Managers or (b) if Members holding at least thirty percent (30%) of the Units Eligible to Vote shall sign, date, and deliver to the LLC's principal office a written demand for the meeting, describing the purpose for which it is to be held. Meetings of Members shall be held at the principal office of the LLC or any other place specified in the notice of meeting. At those meetings the Managers will report to the Members in detail about the operations of the Company.

3.02 Notice of Meeting. Notice of the date, time, and place of each meeting of Members shall be given to each Member not earlier than sixty (60) days nor less than ten (10) days before the meeting date. The notice must include a description of the purpose or purposes for which the meeting is called.

3.03 Record Date. The persons entitled to notice of and to vote at a meeting of Members, and their respective membership interests, shall be determined as of the record date for the meeting. The record date shall be a date not earlier than seventy (70) days nor less than ten (10) days before the meeting selected by the Managers. If the Managers do not specify a record date, the record date shall be the date on which notice of the meeting was first mailed or otherwise delivered.

3.04 Quorum. The presence, in person or by proxy, of Members holding at least seventy five percent (75%) of the outstanding Units Eligible to Vote shall constitute a quorum.

3.05 Proxies. A Member may be represented at a meeting in person, by phone or by written proxy granted to another Member or to any other person who has been approved by the Managers in advance of the meeting and who has agreed to be bound by the confidentiality requirements that apply to Unit Holders.

3.06 Voting. Except as otherwise stated in the Articles of Organization, this Operating Agreement, or applicable law, a matter submitted to a vote of the Members shall be deemed approved if the Units Eligible to Vote meet or exceed the percentage, as set forth in this agreement, to carry the matter.

Article IV Management

4.01 Number and Qualifications of Managers. As provided in the Articles of Organization, the LLC shall be managed by one or more Managers. A Manager may be an individual or an entity and need not be a Member of the LLC. The initial Manager of the LLC shall be ReProp Financial Mortgage Investors, LLC., and this entity shall serve in such capacity until their respective deaths, resignation, or removal under Section 4.09. All references in this Operating Agreement to "Managers" shall be deemed to refer to the Manager so long as the LLC has only one Manager. All references in this Operating Agreement to "Manager" shall be deemed to refer to all Managers so long as the LLC has more than one Manager.

4.02 Executive Officers. The LLC may have such executive officers as are from time to time appointed by the Managers, with such titles as the Managers may designate.

4.03 Employees. Managers may be employed by the LLC to act full-time or part-time upon such terms and such compensation as may be approved by the Members. The employment arrangements, salary and terms of employment of executive officers of the LLC shall be set by the Managers, as approved by the Members. The LLC may have such other employees, serving pursuant to such terms of employment, as the Managers or their delegates determine from time to time.

4.04 Election of Managers. Successor Managers shall be elected at meetings of Members called for the purpose of electing Managers. The meeting notice must state that the purpose, or one of the purposes, of the meeting is election of one or more Managers. A successor Manager shall serve for a term ending when the Members next hold a meeting at which one or more Managers are elected or until the Manager's earlier death, resignation, or removal.

4.05 Authority. Subject to restrictions that may be imposed from time to time by the Members, each Manager shall be an agent of the LLC with authority to bind the LLC in the ordinary course of its business and shall have authority to control the LLC's day-to-day operations. Notwithstanding the forgoing, the approval of the Members holding at least seventy five percent (75%) of the Units Eligible to Vote will be required in order to approve:

- (a) the sale of substantially all of the assets of the LLC (the sale of individual lots at an average gross sales price of \$55,000 per lot does not constitute a sale of substantially all of the assets of the LLC for the purposes of this Section 4.05) ;
- (b) the hypothecation of any asset or assets of the LLC;
- (c) the borrowing of money in any amount or the incurrence of a debt or other obligation that has a liability in excess of \$50,000;
- (d) the merger of the LLC with another entity, regardless of whether the LLC will or will not be the surviving entity;
- (e) the voluntary dissolution of the LLC;

- (f) any material and adverse change in the rights, preferences or privileges of the Units;
- (g) the creation of any new class of membership units having preference over or being on a parity with the Units;
- (h) any redemption of Units other than as provided for in this Operating Agreement;
- (i) any salaries or bonus formulae for the LLC's Managers and employees and any changes thereto; or
- (j) the election or removal of a Manager.

4.06 Other Activities. A Manager may have other business interests and may engage in other activities in addition to those relating to the LLC. This section does not change a Manager's duty to act in a manner that the Manager reasonably believes to be in the best interests of the LLC.

4.07 Meetings; Notices; Quorum; Voting. If there is more than one Manager, meetings of the Managers may be called by any Manager. Meetings shall be held at the place fixed by the Manager or, if no such place has been fixed, at the principal office of the LLC. Oral or written notice of the date, time, and place of any meeting shall be given at least twenty-four (24) hours in advance. Written notice may be delivered personally, given by facsimile or other form of wire communication, or by mail or private carrier, to each Manager's home address. Written notice shall be effective at the earliest of the following: (a) when received, (b) when sent by facsimile or other form of wire communication, or (c) two (2) business days after being mailed.

4.08 Resignation. A Manager may resign at any time by delivering written notice to any other Manager or to the Members. The resignation is effective when the notice is effective under the North Carolina Limited Liability Company Act unless the notice specifies a later effective date, but notwithstanding anything to the contrary the earliest the notice will be effective is thirty days after service of notice. Once delivered, a notice of resignation is irrevocable unless revocation is permitted by the Members. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of the Member.

4.09 Removal of Manager by Members. The Members may remove any Manager with or without cause. A Manager may be removed by the Members only at a meeting called for the purpose of removing the Manager and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the Manager. An affirmative vote of at least seventy five percent (75%) of the Units Eligible to Vote shall be required to remove a Manager.

4.10 Vacancy. If a Manager vacancy occurs, the Members may fill the vacancy as provided in Section 4.04. A vacancy that will occur at a specific later date may be filled before the vacancy occurs, but the new Manager may not take office until the vacancy occurs.

4.11 Salaries. The salaries and other compensation of a Manager shall be fixed from time to time by an affirmative vote of at least seventy five percent (75%) of the Units Eligible to Vote. A Manager shall not be precluded from receiving a salary and other compensation because the Manager is also a Member.

4.12 Other Agents and Professionals. The sole Manager, or a majority of Managers, if more than one, may authorize in writing any agent to enter into any lawful contract or to otherwise act under the direction of the Managers on behalf of the LLC, including as executive officer appointed pursuant to Section 4.02, whether or not such person is a Manager or Member. Such authority shall be confined to the specific instances provided in the document authorizing the agent. The manager may retain other professionals to assist the manager to carry out its day to day operations under Section 4.05.

Article V

Actions Without Notice, Without Meeting, Or By Telephone

5.01 Meeting of all Members or Managers. Notwithstanding any other provision of this Operating Agreement, if all of the Members or Managers shall hold a meeting at any time and place, such meeting shall be valid without call or notice and any lawful action taken at such meeting shall be the action of the Members or Managers, respectively.

5.02 Action Without Meeting. Any action required or permitted to be taken by the Members or the Managers at a meeting may be taken without a meeting if (1) a consent in writing describing the action taken is signed by Members or by Managers, as the case may be, holding the greater of (i) seventy five percent (75%) of the Units Eligible to Vote or (ii) the number of votes required to pass the action.

5.03 Meetings by Telephone. Meetings of the Members or Managers may be held by conference telephone or by any other means of communication by which all participants can hear each other simultaneously during the meeting, and such participation shall constitute presence in person at the meeting.

Article VI

Accounting and Records

6.01 Books of Account. The LLC's books and records shall be maintained by the Managers and shall include the information required to be maintained by North Carolina law. This information includes a register showing the names, addresses, and Units owned by the Unit Holders and the Managers, the LLC's Articles of Organization and any amendments thereto, and this Operating Agreement, together with any amendments thereto. Each Member shall have access thereto at all reasonable times. Each Unit Holder agrees to keep any documents and records received from the LLC confidential and to not disclose them to third parties (except for agents of the Unit Holder to the extent required to properly represent or assist the Unit Holder).

6.02 Fiscal Year. The fiscal year of the LLC shall be the calendar year.

6.03 Accounting Returns. Within ninety (90) days after the close of each fiscal year, the Managers shall cause each Member to receive an unaudited report of the activities of the LLC

for the preceding fiscal year, including a copy of a balance sheet of the LLC as of the end of such year and a statement of income or loss for such year.

6.04 Tax Returns. The Managers shall cause all required federal and state income tax returns for the LLC to be prepared and timely filed with the appropriate authorities. Within ninety (90) days after the end of each fiscal year, each Unit Holder shall be furnished a statement suitable for use in the preparation of the Unit Holder's income tax return, showing the amounts of any distributions, contributions, gains, losses, profits, or credit allocated to the Unit Holder during such fiscal year.

Article VII Allocations and Distributions

7.01 Allocation of Net Profit and Loss. Except as may be required by IRC § 704 and the Treasury Regulations thereunder, net profits, net losses, and other items of income, gain, loss, deduction, and credit shall be apportioned among holders of Units ("Unit Holders") in proportion to their Units (their "profits percentages").

7.02 Determination of Net Profit or Loss.

(a) Computation of Net Profit or Loss. Except as adjusted by Section 7.02(b), the LLC's net profit or net loss for any period shall be the LLC's taxable income or loss for that period, determined in accordance with IRC §703(a) (and, for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to IRC §703(a)(1) shall be included in taxable income or loss).

(b) Adjustments to Net Profit or Loss. For purposes of computing net profit or loss: (a) income and gain exempt from federal income tax and nondeductible expenses under Treas. Reg. §1.704-1(b)(2)(iv)(i) shall be included; (b) items specially allocated under Section 7.04 shall be excluded; and (c) when determining income or loss on the disposition of an item of LLC property or when determining the cost recovery, depreciation, or amortization deduction with respect to any property, the LLC shall use the property's book value determined in accordance with Treas. Reg. §1.704-1(b).

7.03 Limitation. As long as there is at least one Unit Holder with a positive capital account, the net loss allocated to each Unit Holder for any LLC fiscal year pursuant to Section 7.01 shall not exceed the maximum amount of net loss that can be so allocated without causing any Unit Holder to have a deficit capital account at the end of the fiscal year. All net losses in excess of the limitation set forth in this Section 7.03 shall be allocated to the Unit Holders who have positive capital accounts in proportion to their respective positive capital accounts until all such positive capital accounts reach zero. At any time and to the extent there is no Unit Holder with a positive capital account, all net losses shall be allocated according to the Unit Holders' profits percentages. For the purposes of this section and of Section 7.04(c), a Unit Holder's capital account will be deemed to include the value of any obligation to restore a capital account deficit, as limited by Treas. Reg. §1.704-1(c) and as expanded by Treas. Reg. § 1.704-2(g)(1).