

1 GEORGE E. SCHULMAN (State Bar No. 064572)
2 *gschulman@dgdk.com*
3 KATHY BAZOIAN PHELPS (State Bar No. 155564)
4 *kphelps@dgdk.com*
5 UZZI O. RAANAN (State Bar No. 162747)
6 *uranaan@dgdk.com*
7 DANNING, GILL, DIAMOND & KOLLITZ, LLP
8 2029 Century Park East, Third Floor
9 Los Angeles, California 90067-2904
10 Telephone: (310) 277-0077
11 Facsimile: (310) 277-5735

12 Attorneys for David A. Gill, Receiver

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 SECURITIES AND EXCHANGE
16 COMMISSION,

17 Plaintiff,

18 vs.

19 DIVERSIFIED LENDING GROUP,
20 INC.; APPLIED EQUITIES, INC.; AND
21 BRUCE FRIEDMAN,

22 Defendants.

23 and

24 TINA M. PLACOURAKIS,

25 Relief Defendant.

Case No. CV 09-01533-R-JTLx

**MOTION OF RECEIVER FOR
APPROVAL OF:**

**(1) SALE OF 174 UPPER
MOUNTAIN AVENUE,
MONTCLAIR NEW
JERSEY; AND**

**(2) PAYMENT OF BROKERS'
COMMISSION;**

**MEMORANDUM OF POINTS
AND AUTHORITIES; AND
DECLARATION OF DAVID A.
GILL IN SUPPORT THEREOF**

Date: May 18, 2009

Time: 10:00 a.m.

Place: Courtroom 8

312 North Spring Street
Los Angeles, CA

26 David A. Gill, the duly appointed Permanent Receiver for Diversified Lending
27 Group ("DLG") and Applied Equities, Inc. ("AEI") hereby moves for approval of the
28 sale of the real property located at 174 Upper Mountain Road, Montclair, New Jersey
pursuant to the terms of the sale agreement set forth herein and payment of
associated brokers' commissions.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 David A. Gill is the duly appointed Permanent Receiver for DLG and AEI,
4 and their subsidiaries and affiliates, including those specifically named in the
5 amended preliminary injunction.

6
7 **II. RELEVANT FACTS**

8 **A. Procedural History**

9 On March 4, 2009, the Securities and Exchange Commission (“SEC”) filed a
10 Complaint (the “Complaint”) in the SEC Action, alleging two fraud claims for relief
11 against Defendants DLG, AEI, and Bruce Friedman (“Friedman”), as well as Relief
12 Defendant Tina M. Placourakis (“Placourakis”).

13 At the time it filed the Complaint, the SEC also filed in the SEC Action an ex
14 parte application (the “TRO Application”) for a temporary restraining order and for
15 orders: (1) freezing assets, (2) appointing a temporary receiver, (3) prohibiting the
16 destruction of documents, (4) granting expedited discovery, and (5) requiring
17 accountings, and for an order to show cause re preliminary injunction and
18 appointment of a permanent receiver.

19 On March 4, 2009, this Court granted the TRO Application and, among other
20 things, appointed David A. Gill as Temporary Receiver. Mr. Gill with his counsel,
21 accountants and field personnel, took possession of the business premises of the
22 Defendants DLG and AEI (the “Receivership Defendants”) in Sherman Oaks,
23 California.

24 On March 10, 2009, pursuant to a stipulation by Mr. Friedman and no
25 opposition by the other parties, the Court granted the SEC Application and entered
26 the Preliminary Injunction Order, thereby appointing David A. Gill as the Permanent
27 Receiver, among other things.

1 On or about March 31, 2009, the Court signed another Order clarifying that
2 MMHIM, Inc. (MMHIM”) is a wholly owned subsidiary of the Receivership
3 Defendants and that its assets are subject to administration by the Receiver pursuant
4 to the Order of March 4, 2009, as amended and supplemented by the Order of March
5 10, 2009 (the “MMHIM Order”). A copy of the MMHIM Order is attached to the
6 Declaration of David A. Gill as Exhibit “1”. This motion relates to one such asset.

7 The Receiver’s duties include, among other things, liquidating property of the
8 Receivership Defendants and their wholly owned subsidiaries, if appropriate, and
9 paying all costs associated with such liquidation.

10 B. The Property and Encumbrances of Record

11 MMHIM is vested of record with title to a single family residence located at
12 174 Upper Mountain Avenue, Montclair, New Jersey (the “Property”). MMHIM is a
13 wholly owned subsidiary of DLG and included in the assets to be administered
14 herein pursuant to the MMHIM Order. Although the Receiver believes that the
15 authority for him to sell the assets of MMHIM under the MMHIM Order is clear, in
16 an excess of caution, the Receiver obtained from MMHIM, through Bruce Friedman,
17 principal, two executed forms of grant deeds to facilitate transfer of title of the
18 Property to the Purchaser. The Receiver is consulting with his New Jersey counsel
19 and the title company as to whether recordation of a deed is necessary or appropriate
20 under the circumstances, and they are evaluating whether it may be appropriate to
21 transfer title directly from MMHIM to the Purchaser.

22 By this Motion, the Receiver is requesting authority to sell the Property to
23 Purchaser and to consummate the sale either by selling the Property directly from
24 MMHIM to the Purchaser pursuant to the MMHIM Order authorizing the sale of
25 MMHIM assets, or by recording the deed transferring title to the Receiver and the
26 transferring title to the Purchaser, depending on the requirements of the New Jersey
27 title company and the tax consequences of transferring title in one format or the
28 other.

1 Prior to the Receiver's appointment, commencing on or about February 23,
2 2009, MMHIM had listed the Property at \$2,749,000 with Re/Max Village Square, a
3 licensed real estate broker, subject to a commission of 5%. The listing included
4 furniture alleged by Bruce Friedman to have cost Diversified or MMHIM \$350,000.
5 It appears that the Property has been actively marketed since that time.

6 Upon the Receiver's appointment, he contacted the broker at Re/Max and
7 renegotiated the listing agreement, resulting in a lower commission of 4.5%, to be
8 shared by the Listing Broker and the Purchaser's broker. The listing price remains at
9 \$2,749,000.00. The Receiver has requested ratification of his employment of
10 Re/Max Village Square ("Broker") in connection with his Omnibus Motion
11 scheduled for hearing on May 4, 2009. The listing agreement is attached to the Gill
12 Declaration as Exhibit "2". No objection was made timely or at all to the Receiver's
13 request therein to retain said Broker.

14 The Receiver caused the Property to be appraised, and a copy of said appraisal
15 report is attached to the Gill Declaration as Exhibit "3". The appraisal shows a value
16 of \$2,550,000.

17 The Receiver has received a preliminary title report dated as of March 20,
18 2009. A copy of the preliminary title report is attached as Exhibit "4" to the
19 Declaration of David A. Gill. According to the preliminary title report and other
20 documents available to the Receiver, the liens against and alleged interests in the
21 Property consist of the following:

22 -a mortgage recorded in Book 12175 page 7166 on January 27, 2009 and
23 rerecorded on February 17, 2009 in Book 12178 page 6656 to Emigrant
24 Mortgage Company, Inc. dated January 20, 2009 to secure an indebtedness in
25 the original principal sum of \$750,000;

26 The Receiver has requested but not yet obtained a beneficiary statement from
27 Emigrant Mortgage Company.
28

1 C. Terms of Proposed Sale

2 In response to the Broker's marketing efforts, on or about April 2, 2009, the
3 Receiver received an offer from Naureen Udofia and Nkere Udofia (collectively the
4 "Purchasers") to purchase the Property. The initial offer was for \$2,600,000 and
5 included all of the furniture. The Receiver countered the offer at \$2.9 million,
6 including the furniture. After several rounds of arms-length negotiation, the
7 Receiver ultimately received an offer of \$2,550,000 cash including limited personal
8 property such as gym equipment, which personal property has an estimated value of
9 \$45,000.

10 The Receiver negotiated with the Purchasers and arrived at an agreement
11 subject to court approval, memorialized in a purchase and sale agreement, whereby
12 the Buyers have agreed to purchase the Property for \$2,550,000. A copy of the
13 purchase and sale agreement is attached as Exhibit "5" to the Declaration of David
14 A. Gill.

15 The proposed sale of the Property is on an "as is" and "where is" basis,
16 without any warranties or recourse whatsoever, except that title insurance is to be
17 provided.

18
19 D. Good Faith Purchaser

20 The Agreement was reached in response to the Brokers' marketing efforts, and
21 via arms-length negotiations between the parties. To the best of the Receiver's
22 knowledge, the Purchaser has no relationship to DLG, AEI, MMHIM or Bruce
23 Friedman. Purchaser has made an all cash offer to purchase the Property at its
24 appraised value. The Receiver requests a finding that the Purchaser is a good faith
25 purchaser.

26
27 E. Proposed Treatment of Lien and Payment of Other Items Through
28 Escrow

1 The Receiver believes that the underlying debt to Emigrant was an arms-
2 length “hard money” transaction. He does not know what charges will be claimed by
3 Emigrant in addition to payment of principal and interest and therefore proposes to
4 pay all principal and accrued interest on the mortgage claim of Emigrant directly
5 through escrow, along with all undisputed tax liens against the Property and all other
6 customary costs and charges and to reserve in escrow funds to cover any disputes as
7 to charges.

8
9 F. Payment of Commissions to Real Estate Brokers

10 The sale also contemplates the payment of real estate brokers’ commissions
11 from escrow in connection with the proposed sale. The Receiver has requested
12 authority to employ Broker as part of his Omnibus Motion set for hearing on May 4,
13 2009, and no objections were made thereto, but due to timing issues, this Motion also
14 perhaps redundantly seeks approval to pay from sales proceeds out of escrow the
15 listing Broker and Buyer’s Broker their portion set forth in the listing agreement.
16 The listing agreement approved by the Court provides that an aggregate commission
17 of 4.5% of the gross sales price will be paid to the Brokers from escrow in
18 connection with the sale without further order of the Court.

19
20 G. Limited Notice of Motion is Appropriate

21 Pursuant to the Receiver’s Omnibus Motion set for hearing on May 4, 2009,
22 the Receiver has requested authority to serve notice of motions to sell real property
23 on a limited service list. As of the time of the filing of this Motion, which is after the
24 last date fixed for objecting to the Omnibus Motion, no order has yet been entered on
25 the Omnibus Motion and, therefore, no order limiting notice has yet been entered by
26 the Court. However, for the reasons set forth in the Omnibus Motion, the Receiver
27 has requested authority to serve notice of this Motion by mail to the Limited Service
28

1 List and by posting of the notice and the motion on the Receiver's website at
2 www.diversifiedreceivership.com.

3 In addition to service of the notice of this Motion on the limited notice list and
4 posting on his website, the Receiver will post notice of the Motion at the clerk's
5 office for the Bankruptcy Court in the Central District of California and in the New
6 Jersey Law Journal, which is the customary place to advertise such sales under the
7 practice in the Bankruptcy Court for the District of New Jersey.

8
9 H. Procedures for Sale of Real Property

10 In his Omnibus Motion, the Receiver has previously sought authority to sell an
11 interest in real property owned by the Receivership Defendants or other entities
12 wholly owned by the Receivership Defendants as follows:

13 (1) Licensed brokers may be retained without further court order, but at a
14 commission rate no higher than that commonly charged for similar
15 property in the community where the property is located, but subject to
16 confirmation by the Court by a separate order or in connection with
17 confirmation of a property sale.

18 (2) All property sales shall be subject to Court approval and shall be noticed
19 for approval pursuant to the procedures governing the filing of a motion,
20 and any objections thereto shall be governed by the Bankruptcy Rules
21 and Federal Rules of Bankruptcy Procedure unless inconsistent with the
22 provisions of the Order approving this Motion.

23 Accordingly, the Receiver requests that this Motion be governed by said
24 procedure, whereby the Receiver has filed a motion seeking Court approval of the
25 sale of the real property and of payment of the commissions to his broker.

26
27
28

1 III.

2 ARGUMENT

3 A. THE SALE IS IN THE BEST INTERESTS OF THE ESTATE AND ITS
4 CREDITORS AND SHOULD BE APPROVED

5 The Local Rules for the District Court for the Central District of California
6 provide that:

7 Except as otherwise ordered by the Court, a receiver shall administer the estate
8 as nearly as possible in accordance with the practice in the administration of
9 estates in bankruptcy.

10 See Local Rule 66-8.

11 Under the Bankruptcy Code, courts are authorized to permit a trustee to
12 conduct a sale of estate property outside of the ordinary course of business if such
13 sale is in the best interests of the estate and its creditors. See, e.g., In re The
14 Huntington, Ltd., 654 F.2d 578 (9th Cir. 1981); In re Equity Funding Corp., 492 F.2d
15 793 (9th Cir. 1974); In re The Canyon Partnership, 55 B.R. 520 (Bankr. S.D. Cal.
16 1985).

17 A trustee's duties in liquidating the assets of the estate require that a trustee
18 sell estate property where to do so will benefit the estate and its creditors. The
19 Receiver believes that the proposed conduct of sale of the Property is the best
20 method by which to maximize the value of the estate's interest in the Property. The
21 Property has been listed at \$2,749,000 for several months and has been actively
22 marketed. The appraised value of the Property is \$2,550,000. The Receiver has
23 received an offer of \$2,550,000, for the Property and for a small amount of personal
24 property worth no more than \$45,000. The Receiver negotiated, through the
25 Brokers, with the Purchasers and, as a result of such arms-length negotiations, the
26 Receiver has agreed to sell the Property to the Purchasers for \$2,550,000, which the
27 Receiver believes is a reasonable price for the Property.
28

1 The Receiver intends to pay the one lien against the Property to Emigrant
2 directly through escrow, along with any outstanding undisputed real property taxes
3 and other customary closing charges.

4 The Receiver also requests authority to consummate the sale of the Property to
5 purchaser either by permitting the transfer of the Property by deed executed by the
6 Receiver and/or officers of MMHIM directly from MMHIM to Purchasers pursuant
7 to the terms of the MMHIM Order, or by recording a conveyance of the Property
8 from MMHIM to the Receiver and then a subsequent conveyance from the Receiver
9 to the Purchasers.

10
11 **IV.**

12 **CONCLUSION**

13 Based upon the foregoing, the Receiver respectfully requests that the Court:

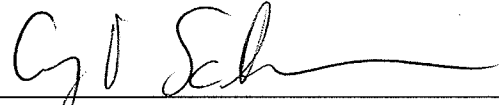
- 14 1. confirm the proposed sale of the Property to the Purchasers on the
15 indicated terms;
 - 16 2. authorize the Receiver to consummate the sale of the Property to
17 Purchasers either by permitting the transfer of the Property directly from MMHIM to
18 Purchasers pursuant to the terms of the MMHIM Order, or by recording a
19 conveyance of the Property from MMHIM to the Receiver and then a subsequent
20 conveyance from the Receiver to the Purchasers.
 - 21 3. authorize the Receiver to pay all undisputed portions of the Emigrant
22 lien directly through escrow, along with all undisputed portions of any real property
23 tax liens, and all other customary closing costs and customary charges;
 - 24 4. authorize the Receiver to pay the real estate brokers' commissions in an
25 amount equal to 4.5% of the purchase price confirmed by the Court;
 - 26 5. make a finding that the Purchasers or their assignees are good faith
27 purchasers of the Property;
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 6. approve the form and manner of notice provided by the Receiver of the sale; and
- 7. provide such other and further relief as the Court deems just and proper.

Dated: April 27 2009

DANNING, GILL, DIAMOND & KOLLITZ, LLP

By: 

George E. Schulman
Kathy Bazoian Phelps
Attorneys for David A. Gill,
Permanent Receiver

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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. (“DLG”), and Applied Equities, Inc. (“AEI”) (collectively the “Receivership Defendants”), 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 (the “Preliminary Injunction Order”), signed and entered by this Court on March 10, 2009, in Securities and Exchange Commission v. Diversified Lending Group, Inc., et al., Case No. CV 09—1533-R-JTL (the “SEC Action”), pending in the United States District Court, Central District of California.

2. I have personal knowledge of the facts in this declaration and, if called as a witness, I could competently testify to these facts.

3. On March 4, 2009, the Securities and Exchange Commission (“SEC”) filed a Complaint (the “Complaint”) in the SEC Action, alleging two fraud claims for relief against Defendants DLG, AEI, and Bruce Friedman (“Friedman”), as well as Relief Defendant Tina M. Placourakis (“Placourakis”).

4. At the time it filed the Complaint, the SEC also filed in the SEC Action an ex parte application (the “TRO Application”) for a temporary restraining order and for orders: (1) freezing assets, (2) appointing a temporary receiver, (3) prohibiting the destruction of documents, (4) granting expedited discovery, and (5) requiring accountings, and for an order to show cause re preliminary injunction and appointment of a permanent receiver.

5. On March 4, 2009, this Court granted the TRO Application and, among other things, appointed me as Temporary Receiver. I, along with my counsel, accountants and field personnel, took possession of the business premises of the

1 Defendants DLG and AEI (the “Receivership Defendants”) in Sherman Oaks,
2 California.

3 6. On March 10, 2009, pursuant to a stipulation by Mr. Friedman and no
4 opposition by the other parties, the Court granted the SEC Application and entered
5 the Preliminary Injunction Order, thereby appointing me as the Permanent Receiver,
6 among other things.

7 7. On or about March 31, 2009, the Court signed another Order clarifying
8 that MMHIM, Inc. (MMHIM”) is a wholly owned subsidiary of the Receivership
9 Defendants and that its assets are subject to administration by the Receiver pursuant
10 to the Order of March 4, 2009, as amended and supplemented by the Order of March
11 10, 2009 (the “MMHIM Order”). A copy of the MMHIM Order is attached hereto
12 as Exhibit “1”. This motion relates to one such asset.

13 8. My duties include, among other things, liquidating property of the
14 Receivership Defendants and their wholly owned subsidiaries, if appropriate, and
15 paying all costs associated with such liquidation.

16 9. MMHIM is vested of record with title to a single family residence located
17 at 174 Upper Mountain Rd., Montclair, New Jersey (the “Property”). MMHIM is a
18 wholly owned subsidiary of DLG and included in the assets to be administered
19 herein pursuant to the MMHIM Order. Although I believe that the authority for me
20 to sell the assets of MMHIM under the MMHIM Order is clear, in an excess of
21 caution, I obtained from MMHIM, through Bruce Friedman, the principal of
22 MMHIM, two executed forms of grant deeds to facilitate transfer of title of the
23 Property to the Purchaser. I am consulting with my New Jersey counsel and the title
24 company as to whether recordation of one of those deeds is necessary or appropriate
25 under the circumstances, and they are evaluating whether it may be appropriate for
26 me to transfer title directly from MMHIM to the Purchaser.

27 10. By this Motion, I am requesting authority to sell the Property to
28 Purchaser and to consummate the sale either by selling the Property directly from

1 MMHIM to the Purchaser pursuant to the MMHIM Order authorizing the sale of
2 MMHIM assets, or by recording the deed transferring title to me and the transferring
3 title to the Purchaser, depending on the requirements of the New Jersey title
4 company and the fees and tax consequences of transferring title in one format or the
5 other.

6 11. Prior to my appointment, commencing on or about February 23, 2009,
7 MMHIM had listed the Property at \$2,749,000 with Re/Max Village Square, a
8 licensed real estate broker, subject to a commission of 5%. The listing included
9 furniture alleged by Bruce Friedman to have cost Diversified or MMHIM \$350,000.
10 It appears that the Property has been actively marketed since that time.

11 12. Upon my appointment, I contacted the broker at Re/Max and renegotiated
12 the listing agreement, resulting in a lower commission of 4.5%, to be shared by the
13 Listing Broker and the Purchaser's broker. The listing price remains at
14 \$2,749,000.00. I have requested ratification of my employment of Re/Max Village
15 Square ("Broker") in connection with my Omnibus Motion scheduled for hearing on
16 May 4, 2009. The listing agreement is attached hereto as Exhibit "2". No objection
17 was made timely or at all to my request therein to retain said Broker.

18 13. I caused the Property to be appraised, and a copy of said appraisal report
19 is attached hereto as Exhibit "3". The appraisal shows a value of \$2,550,000.

20 14. I have received a preliminary title report dated as of March 20, 2009. A
21 copy of the preliminary title report is attached hereto as Exhibit "4". According to
22 the preliminary title report and other documents available to me, the liens against and
23 alleged interests in the Property consist of the following:

24 -a mortgage recorded in Book 12175 page 7166 on January 27, 2009 and
25 rerecorded on February 17, 2009 in Book 12178 page 6656 to Emigrant
26 Mortgage Company, Inc. dated January 20, 2009 to secure an indebtedness in
27 the original principal sum of \$750,000;

28

1 15. I have requested but not yet obtained a beneficiary statement from
2 Emigrant Mortgage Company.

3 16. In response to the Brokers' marketing efforts, on or about April 2, 2009, I
4 received an offer from Naureen Udofia and Nkere Udofia (collectively the
5 "Purchasers") to purchase the Property. The initial offer was for \$2,600,000 and
6 included all of the furniture. I countered the offer at \$2.9 million, including the
7 furniture. After several rounds of arms-length negotiation, I ultimately received an
8 offer of \$2,550,000 cash including limited personal property such as gym equipment,
9 which personal property has an estimated value of \$45,000.

10 17. I negotiated with the Purchasers and arrived at an agreement subject to
11 court approval, memorialized in a purchase and sale agreement, whereby the
12 Purchasers have agreed to purchase the Property for \$2,550,000. A copy of the
13 purchase and sale agreement is attached hereto as Exhibit "5".

14 18. The proposed sale of the Property is on an "as is" and "where is" basis,
15 without any warranties or recourse whatsoever, except that title insurance is to be
16 provided.

17 19. The Agreement was reached in response to the Brokers' marketing efforts,
18 and via arms-length negotiations between the parties. To the best of my knowledge,
19 the Purchaser has no relationship to DLG, AEI, MMHIM or Bruce Friedman.
20 Purchaser has made an all cash offer to purchase the Property at its appraised value.
21 I believe that Purchaser is a good faith purchaser.

22 20. I believe that the underlying debt to Emigrant was an arms-length "hard
23 money" transaction. I do not know what charges will be claimed by Emigrant in
24 addition to payment of principal and contractual interest and therefore propose to pay
25 all undisputed portions of the mortgage claim of Emigrant directly through escrow,
26 along with all undisputed tax liens against the Property along with all other
27 customary costs and charges, retaining in suitable fashion funds to cover any
28 disputed portions of the claim.

1 21. The sale also contemplates the payment of real estate brokers'
2 commissions from escrow in connection with the proposed sale. I have requested
3 authority to employ Broker as part of my Omnibus Motion set for hearing on May 4,
4 2009, and no objections were made thereto, but due to timing issues, this Motion also
5 perhaps redundantly seeks approval to pay Broker and Purchaser's broker their
6 shares of the commission set forth in the listing agreement. The listing agreement
7 approved by the Court provides that an aggregate commission of 4.5% of the gross
8 sales price will be paid to the Brokers from escrow in connection with the sale
9 without further order of the Court.

10 22. Pursuant to my Omnibus Motion set for hearing on May 4, 2009, I have
11 requested authority to serve notice of motions to sell real property on a limited
12 service list. As of the time of the filing of this Motion, which is after the last date
13 fixed for objecting to the Omnibus Motion, no order has yet been entered on the
14 Omnibus Motion and, therefore, no order limiting notice has yet been entered by the
15 Court. However, for the reasons set forth in the Omnibus Motion, I request authority
16 to serve notice of this Motion by mail to the Limited Service List and by posting of
17 the notice and the motion on my website at www.diversifiedreceivership.com.

18 23. In addition to service of the notice of this Motion on the limited notice list
19 and posting on my website, I will notice of the Motion at the clerk's office for the
20 Bankruptcy Court in the Central District of California and in the New Jersey Law
21 Journal, which I have been advised is the customary place to advertise such sales
22 under the practice in the Bankruptcy Court for the District of New Jersey.

23 24. In my Omnibus Motion, I have previously sought authority to sell an
24 interest in real property owned by the Receivership Defendants or other entities
25 wholly owned by the Receivership Defendants as follows:

- 26 a. Licensed brokers may be retained without further court order, but
27 at a commission rate no higher than that commonly charged for
28 similar property in the community where the property is located,

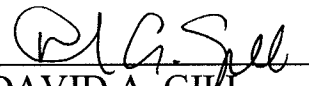
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

but subject to confirmation by the Court by a separate order or in connection with confirmation of a property sale.

- b. All property sales shall be subject to Court approval and shall be noticed for approval pursuant to the procedures governing the filing of a motion, and any objections thereto shall be governed by the Bankruptcy Rules and Federal Rules of Bankruptcy Procedure unless inconsistent with the provisions of the Order approving this Motion.

25. A copy of the proposed Order on the Sale Motion is attached hereto as Exhibit "6".

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Los Angeles, California, on April 27, 2009.



DAVID A. GILL

EXHIBIT 1

1 JOHN M. McCOY III, Cal. Bar No. 166244
 Email: mccoym@sec.gov
 2 GREGORY C. GLYNN, Cal. Bar No. 39999
 Email: glynng@sec.gov
 3 FINOLA H. MANVELIAN, Cal. Bar No. 180681
 Email: manvelianf@sec.gov
 4 MARSHALL S. SPRUNG, Cal. Bar No. 188253
 Email: sprungm@sec.gov
 5 CATHERINE W. BRILLIANT, Cal. Bar No. 229992
 Email: brilliantc@sec.gov
 6 MELISSA GRANT, Cal. Bar No. 205633
 Email: grantm@sec.gov

7 Attorneys for Plaintiff
 8 Securities and Exchange Commission
 Rosalind R. Tyson, Regional Director
 9 Andrew G. Petillon, Associate Regional Director
 5670 Wilshire Boulevard, 11th Floor
 10 Los Angeles, California 90036
 Telephone: (323) 965-3998
 11 Facsimile: (323) 965-3908

12
 13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 SECURITIES AND EXCHANGE
 16 COMMISSION,

17 Plaintiff,

18 vs.

19 DIVERSIFIED LENDING GROUP, INC.;
 20 APPLIED EQUITIES, INC.; and BRUCE
 FRIEDMAN,

21 Defendants,

22 and

23 TINA M. PLACOURAKIS,

24 Relief Defendant.

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

**AMENDED 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**

25
 26
 27
 28

1 This matter came to be heard at 10:00 a.m. on Tuesday, March 10, 2009,
2 pursuant to an Order to Show Cause issued by this Court on March 4, 2009, and
3 upon the prior Application of Plaintiff Securities and Exchange Commission
4 (“Commission”) for a Temporary Restraining Order And Orders: (1) Freezing
5 Assets, (2) Appointing A Temporary Receiver, (3) Prohibiting The Destruction Of
6 Documents, (4) Granting Expedited Discovery, and (5) Requiring Accountings;
7 And To Show Cause Re Preliminary Injunction And Appointment Of A Permanent
8 Receiver (the “Application”).

9 A. This Court has jurisdiction over the parties to, and the subject matter
10 of, this action.

11 B. Good cause exists to believe that Defendants Diversified Lending
12 Group, Inc. (“DLG”), Applied Equities, Inc. (“AEI”) and Bruce Friedman
13 (“Friedman”) (collectively, “the Defendants”), and each of them, have engaged in,
14 are engaging in, and are about to engage in transactions, acts, practices and courses
15 of business that constitute violations of Section 17(a) of the Securities Act of 1933
16 (“Securities Act”), 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange
17 Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17
18 C.F.R. § 240.10b-5.

19 C. The Commission has demonstrated a probability of success on the
20 merits in this action.

21 D. Good cause exists to believe that the Defendants will continue to
22 engage in such violations to the immediate and irreparable loss and damage to
23 investors and to the general public unless they are restrained and enjoined.

24 E. Notice of this Preliminary Injunction has been provided to the
25 Defendants as required by F.R.C.P. 65(a)(1).

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.

IT IS HEREBY ORDERED that the Commission's Application for an 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 is GRANTED.

II.

IT IS FURTHER ORDERED that the Defendants, and their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are preliminarily restrained and enjoined from, directly or indirectly, in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails:

- A. employing any device, scheme or artifice to defraud;
- B. obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- C. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

III.

IT IS FURTHER ORDERED that the Defendants, and their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are preliminarily restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of any security, by the use of any means or

1 instrumentality of interstate commerce, or of the mails, or of any facility of any
2 national securities exchange:

- 3 A. employing any device, scheme or artifice to defraud;
- 4 B. making any untrue statement of a material fact or omitting to state a
5 material fact necessary in order to make the statements made, in the
6 light of the circumstances under which they were made, not
7 misleading; or
- 8 C. engaging in any act, practice, or course of business which operates or
9 would operate as a fraud or deceit upon any person;

10 in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule
11 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

12 **IV.**

13 IT IS FURTHER ORDERED that, except as otherwise ordered by this
14 Court, the Defendants, and their officers, agents, servants, employees, attorneys,
15 subsidiaries and affiliates, and those persons in active concert or participation with
16 any of them, who receive actual notice of this Order, by personal service or
17 otherwise, and each of them, be and hereby are preliminarily restrained and
18 enjoined from, directly or indirectly:

- 19 A. transferring, assigning, selling, hypothecating, changing, wasting,
20 dissipating, converting, concealing, encumbering, or otherwise
21 disposing of, in any manner, any funds, assets, securities, claims, or
22 other real or personal property, wherever located, of the Defendants,
23 or their subsidiaries and affiliates (including but not limited to
24 MMHIM, Inc., DLG International, a Panamanian company, and
25 SunWest Bottlers, LLC), owned by, controlled by, managed by or in
26 the possession or custody of any of them;
- 27 B. transferring, assigning, selling, hypothecating, encumbering, or
28 otherwise disposing of any securities, including, but not limited to,

1 any investment contracts or other securities of DLG, or any of its
 2 subsidiaries or affiliates (including but not limited to MMHIM, Inc.,
 3 DLG International, a Panamanian company, and SunWest Bottlers,
 4 LLC).

5 V.

6 IT IS FURTHER ORDERED that, except as otherwise ordered by this
 7 Court, an immediate freeze is and shall be in effect on all monies and assets (with
 8 an allowance for necessary and reasonable living expenses to be granted only upon
 9 good cause shown by application to the Court with notice to and an opportunity for
 10 the Commission to be heard) in all accounts at any bank, financial institution or
 11 brokerage firm (including any futures commission merchant), all certificates of
 12 deposit, and any other funds or assets, held in the name of, for the benefit of, or
 13 over which account authority is held by, any of the Defendants, and relief
 14 defendant Tina M. Placourakis ("relief defendant Placourakis"), or any entity
 15 affiliated with any of them, including, but not limited to, the accounts set forth
 16 below:

17

<u>Institution Name</u>	<u>Account Name</u>	<u>Account No.</u>
18 Wells Fargo Bank	Diversified Lending Group Inc.	200-0451001
19 Wells Fargo Bank	Diversified Lending Group Inc.	719-3206666
20 Wells Fargo Bank	Diversified Lending Group Inc.	359-7119035
21 Wells Fargo Bank	Diversified Lending Group Inc.	361-0903241
22 Wells Fargo Bank	Diversified Lending Group Inc.	361-0903233

23
24
25
26
27
28

<u>Institution Name</u>	<u>Account Name</u>	<u>Account No.</u>
Wells Fargo Bank	Diversified Lending Group Inc.	362-2099608
Wells Fargo Bank	Diversified Lending Group Inc.	382-7425475
Wells Fargo Bank	Diversified Lending Group Inc.	939-7908642
Wells Fargo Bank	Diversified Lending Group Inc.	981-4827631
Wells Fargo Bank	Diversified Lending Group Inc.	945-0422838
Wells Fargo Bank	Diversified Lending Group Inc.	945-0422846
Wells Fargo Bank	Diversified Lending Group Inc.	945-0422861
Wells Fargo Bank	Diversified Lending Group Inc.	945-0423372
Wells Fargo Bank	Diversified Lending Group Inc.	894-08966843
Wells Fargo Bank	Applied Equities, Inc. ACH Acct.	893-8904177
Wells Fargo Bank	Applied Equities, Inc.	412-1610745
Wells Fargo Bank	Applied Equities, Inc. dba AEI	771-3271497
Wells Fargo Bank	Applied Equities, Inc.	893-8903757
Merrill Lynch	Diversified Lending Group Inc.	236-07199
Merrill Lynch	Diversified Lending Group Inc.	236-07086

<u>Institution Name</u>	<u>Account Name</u>	<u>Account No.</u>
Merrill Lynch	Bruce Friedman and Tina M. Placourakis	236-15L42
Merrill Lynch	MMHIM / Diversified Lending Group Inc.	236-07088
Merrill Lynch	MMHIM / Diversified Lending Group Inc.	236-07217
Merrill Lynch	Bruce Friedman and Robert Knight	236-11007
Merrill Lynch	Gary Friedman and Dale M. Friedman	236-15B47
Merrill Lynch	Bruce Friedman and Diane Cano	236-15H42

VI.

IT IS FURTHER ORDERED that David A. Gill is hereby appointed as Permanent Receiver of DLG and AEI, and their subsidiaries and affiliates (including but not limited to MMHIM, Inc., DLG International, a Panamanian company, and SunWest Bottlers, LLC), with full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property belonging to, being managed by or in the possession of or control of DLG and AEI, and their subsidiaries and affiliates (including but not limited to MMHIM, Inc., DLG International, a Panamanian company, and SunWest Bottlers, LLC), and that such receiver is immediately authorized, empowered and directed:

- A. to have access to and to collect and take custody, control, possession, and charge of all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books,

1 records, papers and other real or personal property, wherever located,
2 of or managed by DLG and AEI, and their subsidiaries and affiliates
3 (including but not limited to MMHIM, Inc., DLG International, a
4 Panamanian company, and SunWest Bottlers, LLC), with full power
5 to sue, foreclose, marshal, collect, receive, and take into possession all
6 such property;

7 B. to have control of, and to be added as the sole authorized signatory
8 for, all accounts of the entities in receivership, including all accounts
9 at any bank, title company, escrow agent, financial institution or
10 brokerage firm (including any futures commission merchant) which
11 has possession, custody or control of any assets or funds of DLG and
12 AEI, and their subsidiaries and affiliates (including but not limited to
13 MMHIM, Inc., DLG International, a Panamanian company, and
14 SunWest Bottlers, LLC), or which maintains accounts over which
15 DLG and AEI, and their subsidiaries and affiliates (including but not
16 limited to MMHIM, Inc., DLG International, a Panamanian company,
17 and SunWest Bottlers, LLC), and/or any of their employees or agents
18 have signatory authority;

19 C. to conduct such investigation and discovery as may be necessary to
20 locate and account for all of the assets of or managed by DLG and
21 AEI, and their subsidiaries and affiliates (including but not limited to
22 MMHIM, Inc., DLG International, a Panamanian company, and
23 SunWest Bottlers, LLC), and to engage and employ attorneys,
24 accountants and other persons to assist in such investigation and
25 discovery;

26 D. to take such action as is necessary and appropriate to preserve and
27 take control of and to prevent the dissipation, concealment, or
28 disposition of any assets of or managed by DLG and AEI, and their

- 1 subsidiaries and affiliates;
- 2 E. to make an accounting, as soon as practicable, to this Court and the
- 3 Commission of the assets and financial condition of DLG and AEI,
- 4 and to file the accounting with the Court and deliver copies thereof to
- 5 all parties;
- 6 F. to make such payments and disbursements from the funds and assets
- 7 taken into custody, control, and possession or thereafter received by
- 8 him or her, and to incur, or authorize the making of, such agreements
- 9 as may be necessary and advisable in discharging his or her duties as
- 10 permanent receiver;
- 11 G. to employ attorneys, accountants and others to investigate and, where
- 12 appropriate, to institute, pursue, and prosecute all claims and causes of
- 13 action of whatever kind and nature which may now or hereafter exist
- 14 as a result of the activities of present or past employees or agents of
- 15 DLG and AEI, and their subsidiaries and affiliates (including but not
- 16 limited to MMHIM, Inc., DLG International, a Panamanian company,
- 17 and SunWest Bottlers, LLC); and
- 18 H. to have access to and monitor all mail of the entities in receivership in
- 19 order to review such mail which he or she deems relates to their
- 20 business and the discharging of his or her duties as permanent
- 21 receiver.

22 **VII.**

23 IT IS FURTHER ORDERED that the Defendants, and their subsidiaries and

24 affiliates (including but not limited to MMHIM, Inc., DLG International, a

25 Panamanian company, and SunWest Bottlers, LLC), including all of the other

26 entities in receivership, and their officers, agents, servants, employees and

27 attorneys, and any other persons who are in custody, possession or control of any

28 assets, collateral, books, records, papers or other property of or managed by any of

1 the entities in receivership, shall forthwith give access to and control of such
2 property to the Permanent Receiver.

3 **VIII.**

4 IT IS FURTHER ORDERED that no officer, agent, servant, employee, or
5 attorney of the Defendants shall take any action or purport to take any action, in
6 the name of or on behalf of DLG or AEI without the written consent of the
7 Permanent Receiver or order of this Court.

8 **IX.**

9 IT IS FURTHER ORDERED that, except by leave of this Court, during the
10 pendency of this receivership, all clients, investors, trust beneficiaries, note
11 holders, creditors, claimants, lessors, consultant groups and all other persons or
12 entities seeking relief of any kind, in law or in equity, from the Defendants, or their
13 subsidiaries and affiliates (including but not limited to MMHIM, Inc., DLG
14 International, a Panamanian company, and SunWest Bottlers, LLC), and all
15 persons acting on behalf of any such investor, trust beneficiary, note holder,
16 creditor, claimant, lessor, consultant group or other person, including sheriffs,
17 marshals, servants, agents, employees, and attorneys, are hereby restrained and
18 enjoined from, directly or indirectly, with respect to these persons and entities:

- 19 A. commencing, prosecuting, continuing or enforcing any suit or
20 proceeding (other than the present action by the Commission) against
21 any of them;
- 22 B. using self-help or executing or issuing or causing the execution or
23 issuance of any court attachment, subpoena, replevin, execution or
24 other process for the purpose of impounding or taking possession of
25 or interfering with or creating or enforcing a lien upon any property or
26 property interests owned by or in the possession of DLG or AEI; and
- 27 C. doing any act or thing whatsoever to interfere with taking control,
28 possession or management by the permanent receiver appointed

1 hereunder of the property and assets owned, controlled or managed by
2 or in the possession of DLG or AEI, or in any way to interfere with or
3 harass the Permanent Receiver or his or her attorneys, accountants,
4 employees or agents or to interfere in any manner with the discharge
5 of the Permanent Receiver's duties and responsibilities hereunder.

6 **X.**

7 IT IS FURTHER ORDERED that the Defendants, and their subsidiaries,
8 affiliates, officers, agents, servants, employees and attorneys, shall cooperate with
9 and assist the Permanent Receiver and shall take no action, directly or indirectly, to
10 hinder, obstruct, or otherwise interfere with the Permanent Receiver or his or her
11 attorneys, accountants, employees or agents, in the conduct of the Permanent
12 Receiver's duties or to interfere in any manner, directly or indirectly, with the
13 custody, possession, management, or control by the Permanent Receiver of the
14 funds, assets, collateral, premises, and choses in action described above.

15 **XI.**

16 IT IS FURTHER ORDERED that the Defendants shall pay the costs, fees
17 and expenses of the Permanent Receiver incurred in connection with the
18 performance of his or her duties described in this Order, including the costs and
19 expenses of those persons who may be engaged or employed by the Permanent
20 Receiver to assist him or her in carrying out his or her duties and obligations. All
21 applications for costs, fees and expenses for services rendered in connection with
22 the receivership other than routine and necessary business expenses in conducting
23 the receivership, such as salaries, rent and any and all other reasonable operating
24 expenses, shall be made by application setting forth in reasonable detail the nature
25 of the services and shall be heard by the Court.

26 **XII.**

27 IT IS FURTHER ORDERED that no bond shall be required in connection
28 with the appointment of the Permanent Receiver. Except for an act of gross

1 negligence, the Permanent Receiver shall not be liable for any loss or damage
2 incurred by any of the Defendants, their officers, agents, servants, employees and
3 attorneys or any other person, by reason of any act performed or omitted to be
4 performed by the Permanent Receiver in connection with the discharge of his or
5 her duties and responsibilities.

6 **XIII.**

7 IT IS FURTHER ORDERED that representatives of the Commission are
8 authorized to have continuing access to inspect or copy any or all of the corporate
9 books and records and other documents of the Defendants and the other entities in
10 receivership, and continuing access to inspect their funds, property, assets and
11 collateral, wherever located.

12 **XIV.**

13 IT IS FURTHER ORDERED that, except as otherwise ordered by this
14 Court, the Defendants, relief defendant Placourakis, and their officers, agents,
15 servants, employees, attorneys, subsidiaries and affiliates, including the other
16 entities in receivership, and those persons in active concert or participation with
17 any of them, who receive actual notice of this Order, by personal service or
18 otherwise, and each of them, be and hereby are preliminarily restrained and
19 enjoined from, directly or indirectly: destroying, mutilating, concealing,
20 transferring, altering, or otherwise disposing of, in any manner, any documents,
21 which includes all books, records, computer programs, computer files, computer
22 printouts, contracts, correspondence, memoranda, brochures, or any other
23 documents of any kind in their possession, custody or control, however created,
24 produced, or stored (manually, mechanically, electronically, or otherwise),
25 pertaining in any manner to Defendants, and their subsidiaries and affiliates
26 (including but not limited to MMHIM, Inc., DLG International, a Panamanian
27 company, and SunWest Bottlers, LLC).

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XV.

IT IS FURTHER ORDERED that the Commission's application for expedited discovery, previously granted in this Court's Temporary Restraining Order is continued and that the Commission and the Permanent Receiver may request documents from and take depositions of parties and non-parties upon oral examination subject to two calendar days notice pursuant to Rules 30(a), 34, and 45 of the Federal Rules of Civil Procedure, that the Commission and Permanent Receiver may take more than one deposition at the same time, that depositions of the Defendants may be taken on any day, including Saturdays, Sundays, and holidays subject to two calendar days notice, including notice given personally, by facsimile or by electronic mail, and that the depositions taken pursuant to this Order shall not be counted for purposes of determining the applicability of the limitations of Rules 30(a)(2)(A) and 30(a)(2)(B) of the Federal Rules of Civil Procedure.

XVI.

IT IS FURTHER ORDERED that the non-receivership Defendants shall, within five days of the issuance of this Order, each prepare and deliver to the Commission a detailed and complete schedule of all their assets, including all real and personal property exceeding \$5,000 in value, and all bank, securities, futures and other accounts identified by institution, branch address and account number. The accounting shall include a description of the source(s) of all such assets. Such accounting shall be filed with the Court and a copy shall be delivered to the Commission's Los Angeles Regional Office. After completion of the accounting, the Defendants shall produce to the Commission's Los Angeles Regional Office, at a time agreeable to the Commission, all books, records and other documents supporting or underlying his accounting.

XVII.

IT IS FURTHER ORDERED that the Defendants, and their officers, agents,

1 servants, employees, attorneys, subsidiaries and affiliates, including the other
2 entities in receivership, shall, within 24 hours of the issuance of this Order of
3 Preliminary Injunction, cause to be prepared and delivered to the Permanent
4 Receiver, a detailed and complete schedule of all passwords, usernames, and
5 identification numbers for all web sites, email accounts, and all accounts at any
6 bank, financial institution, brokerage firm, or insurance company to which DLG
7 and AEI have access.

8 **XVIII.**

9 IT IS FURTHER ORDERED that this Order of Preliminary Injunction shall
10 remain in effect until a hearing on the Commission's Request for a Permanent
11 Injunction is heard and determined by this Court, or until other Order of this Court.

12 **XIX.**

13 IT IS FURTHER ORDERED that this Court shall retain jurisdiction over
14 this action for the purpose of implementing and carrying out the terms of all orders
15 and decrees which may be entered herein and to entertain any suitable application
16 or motion for additional relief within the jurisdiction of this Court.

17 **IT IS SO ORDERED.**

18
19 DATED: March 31, 2009



20
21 **HONORABLE MANUEL L. REAL**
UNITED STATES DISTRICT JUDGE

22
23 Presented by:

24 /s/ John M. McCoy III
25 John M. McCoy, III
26 Attorney for Plaintiff
27 Securities and Exchange Commission
28

EXHIBIT 2



REAL ESTATE LISTING/COMMISSION AGREEMENT
GSMLS, LLC

(Page 1 of 2)

1. THE FOLLOWING TERMS ARE DEFINED IN THE BOX BELOW AND WHEN MENTIONED IN THIS AGREEMENT SHALL MEAN:

INFORMATION BOX: "Owner(s)" or ("You") <u>M.M.H.M., Inc</u> Owner's Address <u>M.M.H.M., Inc</u> Owner's Title # <u>010LB-</u> Fax # <u>-</u> EB Tele# <u>973-579-3500</u> FAX # <u>973-579-3275</u> "Listing Broker" <u>Christina L. Sullivan</u> "Property" <u>178 Upper Montclair Ave</u> Broker's Add: <u>516 Wall St</u> <u>Montclair</u> "Service" or "GSMLS" <u>Carson State Multiple Listing Service, LLC</u> "Listing Price" SALE \$ <u>275,000</u> RENTAL \$ <u>-</u>	
TERM OF AGREEMENT: From "Commencement Date" <u>04/02/09</u> To "Expiration Date" <u>07/03/09</u>	
DISCLOSURE OF BUSINESS RELATIONSHIP BOX: I, <u>Christina L. Sullivan</u> as an authorized representative (Name of Licensee) of <u>Christina L. Sullivan</u> (Name of Listing Broker) Intend as of this time, to work with you as a: (Check only one line) Seller's/Landlord's Agent only Seller's/Landlord's Agent and Disclosed Dual Agent if the opportunity arises. Transaction Broker	OFFER OF COOPERATION / COMPENSATION BOX: The Seller/Landlord authorizes and the Listing Broker offers Cooperation/Compensation as follows: (Check and Complete Appropriate Line(s)) TO: SUBAGENTS YES: <u>0</u> @ <u>-</u> NO: <u>-</u> TO: BUYER BROKERS YES: <u>2.25</u> - <u>68</u> NO: <u>-</u> TO: TRANSACTION BROKERS YES: <u>0</u> @ <u>-</u> NO: <u>-</u>
TABLE FOR COMPUTER: Seller Agent = "SA" Disclosed Dual Agent = "DD" Transaction Broker = "TB"	
The Owner <u>does</u> <input checked="" type="checkbox"/> <u>not</u> authorize the Listing Broker to place a GSMLS Lockbox on the Property to allow the showing of the Property.	

2. GRANT OF EXCLUSIVE RIGHT TO SELL, LEASE, EXCHANGE OR OTHERWISE TRANSFER AND TO MULTIPLE LIST PROPERTY. In consideration of the Listing Broker listing and endeavoring to find Buyers/Tenants for the Property at the Listing Price, the OWNER (or their legally authorized representative) grants the Listing Broker the exclusive right to sell, lease, exchange or otherwise transfer the Property, at the Listing Price and on the terms as stated in this Agreement, or upon such other price and/or terms as may be acceptable to the Owner. The Listing Broker is directed by the Owner to list the Property with the SERVICE and to distribute this listing to Service participants.

3. COMMISSION OR FEE DISCLOSURE. "AS SELLER, YOU HAVE THE RIGHT TO INDIVIDUALLY REACH AN AGREEMENT ON ANY FEE, COMMISSION, OR OTHER VALUABLE CONSIDERATION WITH ANY BROKER, NO FEE, COMMISSION OR OTHER CONSIDERATION HAS BEEN FIXED BY ANY GOVERNMENTAL AUTHORITY OR BY ANY TRADE ASSOCIATION OR MULTIPLE LISTING SERVICE." Nothing herein is intended to prohibit an individual Broker from independently establishing a policy regarding the amount of fee, commission or other valuable consideration to be charged in transactions by the Broker.

4. COMMISSION SPLITS. LISTING BROKERS USUALLY COOPERATE WITH OTHER BROKERAGE FIRMS BY SHARING INFORMATION ABOUT THEIR LISTINGS AND OFFERING TO PAY PART OF THEIR COMMISSION TO THE FIRM THAT PRODUCES A BUYER. THIS IS GENERALLY REFERRED TO AS THE "COMMISSION SPLIT". SOME LISTING BROKERS OFFER TO PAY COMMISSION SPLITS OF A PORTION OF THE GROSS COMMISSION, USUALLY EXPRESSED AS A PERCENTAGE OF THE SELLING PRICE, LESS A SIGNIFICANT DOLLAR AMOUNT. OTHER LISTING BROKERS OFFER A PORTION OF THE GROSS COMMISSION LESS ONLY A MINIMAL LISTING FEE OR LESS ZERO. THE AMOUNT OF COMMISSION SPLIT YOUR BROKER OFFERS CAN AFFECT THE EXTENT TO WHICH YOUR PROPERTY IS EXPOSED TO PROSPECTIVE BUYERS WORKING WITH LICENSEES FROM OTHER BROKERAGE FIRMS. ON THIS LISTING, THE BROKER IS OFFERING A COMMISSION SPLIT OF 2.25 MINUS 68 TO POTENTIAL COOPERATING BROKERS. IF YOU FEEL THAT THIS MAY RESULT IN YOUR PROPERTY RECEIVING LESS THAN MAXIMUM EXPOSURE TO BUYERS, YOU SHOULD DISCUSS THESE CONCERNS WITH THE LISTING SALESPERSON OR HIS/SHE SUPERVISING BROKER. BY SIGNING THIS LISTING AGREEMENT THE OWNER(S) ACKNOWLEDGE HAVING READ THIS STATEMENT ON COMMISSION SPLITS.

5. PAYMENT OF COMMISSION FOR SALE/LEASE, AGENCY ARRANGEMENTS. The Owner agrees to pay the Listing Broker (or as the Listing Broker may direct) a commission if the Property is sold, leased, exchanged or otherwise transferred by/through the Listing Broker, or through any other source (including the direct sale/lease by the Owner) before the Expiration Date. The Commission shall be as follows:

The "Sale Commission" 4.5% of selling price The "Lease Commission" -
 The Commission shall be earned when a ready, willing and able Buyer/Tenant is procured and shall be paid at the time of the transfer of the Property or signing of the lease. By signing this Agreement the Owner instructs the title agent/attorney to pay the commission as such time. In the event the Property is sold to the Tenant during the term of its Tenancy, the Sale Commission shall be paid by the Owner to the Listing Broker if sold to the Tenant by -. The Listing Broker agrees that the Commission may be shared with any Broker who assists Listing Broker in causing a sale, lease, exchange or transfer of the Property as indicated in the offer of Cooperation/Compensation Box. In the event the Commission due the Listing Broker from the Owner is not paid per the terms of this Agreement, the Owner agrees to pay all expenses, including reasonable attorney's fees incurred by the Listing Broker, relating to the collection of the Commission.

6. BROKER PROTECTION. Owner agrees to pay the Listing Broker the Commission if the Owner, acting on the Owner's own behalf, within 90 days after the Expiration Date conveys or agrees to convey the Property to any Buyer shown the Property by the Listing Broker or any person during the term of this Listing Agreement. This clause shall not apply if the property has been listed by the Owner with another broker by written agreement.

(ADDITIONAL CONTRACTUAL PROVISIONS ARE ON THE REVERSE SIDE OF THIS PAGE, PLEASE REVIEW)

Listing Agent Christina L. Sullivan (L.S.) Owner M.M.H.M. INC by (L.S.)
 Date Debra Ricci
 LA ID # _____ Owner _____ (L.S.)
 Date _____
 Accepted By: _____ (L.S.) Owner: _____ (L.S.)
 Date _____
 (Print Name) _____
 Broker ID # _____ Owner: _____ (L.S.)
 Date _____

MLS# _____

PROPERTY ADDRESS _____

ADDENDUM TO NJMLS
REAL ESTATE LISTING/COMMISSION AGREEMENT

COMMISSION SPLITS

LISTING BROKERS USUALLY COOPERATE WITH OTHER BROKERAGE FIRMS BY SHARING INFORMATION ABOUT THEIR LISTING AND OFFERING TO PAY PART OF THEIR COMMISSION TO THE FIRM THAT PRODUCES A BUYER. THIS IS GENERALLY REFERRED TO AS THE "COMMISSION SPLIT."

SOME LISTING BROKERS OFFER TO PAY COMMISSION SPLITS OF A PORTION OF THE GROSS COMMISSION, USUALLY EXPRESSED AS A PERCENTAGE OF THE SELLING PRICE, LESS A SIGNIFICANT DOLLAR AMOUNT. OTHER LISTING BROKERS OFFER A PORTION OF THE GROSS COMMISSION LESS ONLY A MINIMAL LISTING FEE OR LESS ZERO.

THE AMOUNT OF COMMISSION SPLIT YOUR BROKER OFFERS CAN AFFECT THE EXTENT TO WHICH YOUR PROPERTY IS EXPOSED TO PROSPECTIVE BUYERS WORKING WITH LICENSEES FROM OTHER BROKERAGE FIRMS.

ON THIS LISTING, THE BROKER IS OFFERING A COMMISSION SPLIT OF 2.25%
MINUS 1/6% TO POTENTIAL COOPERATING BROKERS.

IF YOU FEEL THAT THIS MAY RESULT IN YOUR PROPERTY RECEIVING LESS THAN MAXIMUM EXPOSURE TO BUYERS, YOU SHOULD DISCUSS THOSE CONCERNS WITH THE LISTING SALESPERSON OR HIS/HER SUPERVISING BROKER.

BY SIGNING THIS LISTING AGREEMENT, THE OWNER(S) ACKNOWLEDGE HAVING READ THIS STATEMENT ON COMMISSION SPLITS.

Sales Associate *Christina Lane* Owner Signature *M.M. HTM INC*
 Broker/Manager Signature _____ Owner Signature *W. J. Guzman*
 Print Owner Name _____ Owner Phone # _____ Realtor # _____
 Print Owner Name _____ Date _____
 Information herein deemed reliable but not guaranteed.
 White Copy - Realtor Yellow Copy - Owner
 Revised 07/2001

New Jersey Multiple Listing Services, Inc.
160 Terrace St., PO Box U, Haworth, NJ 07641
Mail or Fax a Copy to the NJMLS Within 24 Hours of List Date
FAX NUMBER: 201-387-2535

Consumer Information Statement on New Jersey Real Estate Relationships

In New Jersey, real estate licensees are required to disclose how they intend to work with buyers and sellers in a real estate transaction.

- 1. AS A SELLER'S AGENT OR SUBAGENT, I, AS A LICENSEE, REPRESENT THE SELLER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE BUYER WILL BE TOLD TO THE SELLER.
2. AS A BUYER'S AGENT, I, AS A LICENSEE, REPRESENT THE BUYER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE SELLER WILL BE TOLD TO THE BUYER.
3. AS A DISCLOSED DUAL AGENT, I, AS A LICENSEE, REPRESENT BOTH PARTIES. HOWEVER, I MAY NOT, WITHOUT EXPRESS PERMISSION, DISCLOSE THAT THE SELLER WILL ACCEPT A PRICE LESS THAN THE LISTING PRICE OR THAT THE BUYER WILL PAY A PRICE GREATER THAN THE OFFERED PRICE.
4. AS A TRANSACTION BROKER, I, AS A LICENSEE, DO NOT REPRESENT EITHER THE BUYER OR THE SELLER. ALL INFORMATION I ACQUIRE FROM ONE PARTY MAY BE TOLD TO THE OTHER PARTY.

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of business relationship you have with that licensee.

There are four business relationships: (1) seller's agent; (2) buyer's agent; (3) disclosed dual agent; and (4) transaction broker. Each of these relationships imposes certain legal duties and responsibilities on the licensee as well as on the seller or buyer represented.

SELLER'S AGENT

A seller's agent WORKS ONLY FOR THE SELLER and has legal obligations, called fiduciary duties, to the seller. These include reasonable care, undivided loyalty, confidentiality and full disclosure.

Seller's agents include all persons licensed with the brokerage firm which has been authorized through a listing agreement to work as the seller's agent. In addition, other brokerage firms may accept an offer to work with the listing broker's firm as the seller's agents.

BUYER'S AGENT

A buyer's agent WORKS ONLY FOR THE BUYER. A buyer's agent has fiduciary duties to the buyer which include reasonable care, undivided loyalty, confidentiality and full disclosure.

A buyer wishing to be represented by a buyer's agent is advised to enter into a separate written buyer agency contract with the brokerage firm which is to work as their agent.

DISCLOSED DUAL AGENT

A disclosed dual agent WORKS FOR BOTH THE BUYER AND THE SELLER. To work as a dual agent, a firm must first obtain the informed written consent of the buyer and the seller.

A real estate licensee working as a disclosed dual agent must carefully explain to each party that, in addition to working as their agent, their firm will also work as the agent for the other party.

NCJAR 03103

or the other party and cannot advise or counsel either party on how to gain an advantage at the expense of the other party on the basis of confidential information obtained from or about the other party.

If you decide to enter into an agency relationship with a firm which is to work as a disclosed dual agent, you are advised to sign a written agreement with that firm.

TRANSACTION BROKER

The New Jersey Real Estate Licensing Law does not require licensees to work in the capacity of an "agent" when providing brokerage services. A transaction broker works with a buyer or a seller or both in the sales transaction without representing anyone.

YOU MAY OBTAIN LEGAL ADVICE ABOUT THESE BUSINESS RELATIONSHIPS FROM YOUR OWN LAWYER. THIS STATEMENT IS NOT A CONTRACT AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE NEW JERSEY REAL ESTATE COMMISSION CN 328 TRENTON, NJ 08625-0828 DAWN RAFFERTY - EXECUTIVE DIRECTOR

ACKNOWLEDGMENT OF RECEIPT OF CONSUMER INFORMATION STATEMENT (CIS)

FOR SELLERS AND LANDLORDS

"By signing this Consumer Information Statement, I acknowledge that I received this Statement from (name of brokerage firm) prior to discussing my motivation to sell or lease or my desired selling price or leasing price with one of its representatives."

Signed: [Signature]

FOR BUYERS AND TENANTS

"By signing this Consumer Information Statement, I acknowledge that I received this Statement from (name of brokerage firm) prior to discussing my motivation or financial ability to buy or lease with one of its representatives."

Signed: [Signature]

DECLARATION OF BUSINESS RELATIONSHIP

I, (name of licensee) [Signature] as an authorized representative of [Signature] (name of brokerage firm)

intend, as of this time, to work with you as a: (indicate one of the following)

- seller's agent only.
buyer's agent only.
seller's agent and disclosed dual agent if the opportunity arises.
buyer's agent and disclosed dual agent if the opportunity arises.
transaction broker only.
seller's agent on properties on which this firm is acting as the seller's agent and transaction broker on other properties.

DATE: [Signature]