

1 DAVID A. GILL (State Bar No.)  
2 dgill@dgdk.com  
3 2029 Century Park East, Third Floor  
4 Los Angeles, California 90067-2904  
5 Telephone: (310) 277-0077  
6 Facsimile: (310) 277-5735

7 Permanent Receiver

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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **WESTERN DIVISION**

12 SECURITIES AND EXCHANGE  
13 COMMISSION,

14 Plaintiff,

15 vs.

16 DIVERSIFIED LENDING GROUP,  
17 INC.; APPLIED EQUITIES, INC.; AND  
18 BRUCE FRIEDMAN,

19 Defendants.

20 and

21 TINA M. PLACOURAKIS,

22 Relief Defendant.

Case No. CV 09-01533-R-JTLx

**RECEIVER'S FIRST ACCOUNT  
AND REQUEST FOR APPROVAL  
OF PROFESSIONAL FEES AND  
EXPENSES; DECLARATIONS OF  
DAVID A. GILL; KATHY  
BAZOIAN PHELPS; DAVID W.  
CALLAGHAN; JACK ZAKIM;  
STEPHEN L. RAUCHER; PETER  
N. CARLINO; AND G. KIRKLAND  
HARDYMON**

Date: September 21, 2009

Time: 10:00 a.m.

Place: Courtroom 8  
312 North Spring Street  
Los Angeles, CA

23 David A. Gill, the Permanent Receiver (the "Receiver") of Diversified  
24 Lending Group, Inc. ("DLG") and Applied Equities, Inc. ("AEI"), and their  
25 subsidiaries and affiliates, including but not limited to MMHIM, Inc. and DLG  
26 International (collectively, hereinafter referred to as "Diversified"), hereby  
27 respectfully submits his First Account and Request for Approval of Professional Fees  
28

1 and Expenses pursuant to the orders of the Court, Fed. R. Civ. P. 66 and Local Rule  
2 66-6.1.

3  
4 **I.**

5 **INTRODUCTION**

6 This document sets forth my account of receipts and disbursements as  
7 Receiver for Diversified for the period of March 4, 2009 through July 31, 2009, in  
8 addition to a request to compensate myself and my professionals from assets which I  
9 have generated.

10 I was appointed Receiver of Diversified amidst allegations that Diversified  
11 was engaged in fraudulent activities relating to the sale of unregistered securities in  
12 violation of applicable law. The first five months of my involvement in this matter  
13 have required an extensive amount of time and effort on my part and the part of my  
14 professionals in order to reconstruct the records of Diversified which were woefully  
15 inadequate and to investigate the over 50 assets in which Diversified is involved.  
16 This process has been labor intensive and, as I continue to receive more and more  
17 records and discover new accounts and assets, this process is not yet complete.

18 As of this date I am holding approximately \$2,121,100 in cash in a non-  
19 interest bearing federally insured account<sup>1</sup> and am in escrow subject to court  
20 approval to sell real property which might deliver approximately \$3,170,000 more to  
21 the estate net of encumbrances and costs. I and my professionals have now worked  
22 for over five months without any compensation or reimbursement for expenses

23  
24 \_\_\_\_\_  
25 <sup>1</sup> In order to obtain complete FDIC coverage, it is necessary for me to maintain the funds in  
26 a non-interest bearing account in that, on October 14, 2008, the FDIC announced its temporary  
27 Transaction Account Guarantee Program, providing depositors with unlimited coverage for  
28 noninterest-bearing transaction accounts if their bank is a participant in the FDIC's Temporary  
Liquidity Guarantee Program.

1 advanced. We have expended time in performance of our duties through July 31,  
2 2009, as detailed in the Declarations of David A. Gill, Kathy Bazoian Phelps, David  
3 W. Callaghan, Jack Zakim, Stephen L. Raucher, Peter N. Carlino and G. Kirkland  
4 Hardymon attached hereto, and we herein request allowance of compensation for  
5 services rendered through July 31, 2009. I have or will have sufficient funds with  
6 which to defray these expenses and fund continuing administration.

7  
8 **II.**

9 **RELEVANT FACTS**

10 **A. Procedural History**

11 1. On March 10, 2009, pursuant to a stipulation by Bruce Friedman and no  
12 opposition by the other parties, the Court granted the Application of the Securities  
13 and Exchange Commission and entered the Preliminary Injunction Order, thereby  
14 appointing me as the Permanent Receiver, among other things. On March 31, 2009,  
15 and on April 3, 2009, the Court entered orders augmenting the March 10, 2009 order,  
16 clarifying that I should administer certain property vested of record in particular  
17 Diversified entities.

18  
19 **B. Post Appointment Activities**

20 2. On August 14, 2009, I filed my Second Report, which is set for hearing  
21 on September 8, 2009. I request that the Court take judicial notice of my Second  
22 Report, a copy of which is attached to the Request for Judicial Notice filed  
23 concurrently herewith in support hereof as Exhibit "A". The Second Report sets  
24 forth in detail my post-appointment activities in this case, and I will not duplicate an  
25 explanation of those activities in this Account and Request for Fees.

26 3. In summary, based upon the abysmal state of the records and the  
27 volume of transactions undertaken by Diversified, I realized quite quickly that  
28 immediate legal and financial counsel were required to assist me in my

1 administration of this receivership estate. I acted to employ the following  
2 professionals: Danning, Gill, Diamond & Kollitz LLP, as my general counsel,  
3 LECG, LLC as my financial advisors and forensic accountants, Jack Zakim of  
4 Nashel Kates Nussman Rapone Ellis & Farhi, LLP as New Jersey counsel, Peter  
5 N.Carlino of MacNeill & Carlino, PLLC and G. Kirkland Hardymon of Rayburn,  
6 Cooper & Durham, P.A. as North Carolina counsel.

7       4. My professionals and I have been actively engaged nearly full time in  
8 administering the receivership estate, by preserving and reconstructing records,  
9 reaching out informally and formally to the parties involved in the numerous  
10 business transactions undertaken by Diversified, establishing procedures to manage  
11 the case, auctioning personal property and listing and selling real property, among  
12 many other things. Among other things, I and my professionals have obtained court  
13 permission for procedures relative to administration of sales, conducted substantial  
14 discovery and otherwise investigated into the assets and business affairs of  
15 Diversified.

16       5. I have attached hereto detailed time entries reflecting the services I have  
17 provided, which are set forth in Exhibit "2" attached to my Declaration hereto.  
18 Additionally, each of my professionals have also provided their detailed time  
19 records, set forth in Exhibits "5", "9", "11", "12", "14" and "15" hereto, along with  
20 narrative explanations of the services provided by them in each of their declarations  
21 attached hereto.

22       6. The services provided by professionals have been extensive due to size  
23 of this case, the large number of transactions entered into by Diversified, the poor  
24 state of the books and records at the time of my appointment, and the need for us to  
25 have to obtain and review thousands of documents to reconstruct the records. My  
26 accountants in particular have had to spend an extraordinary amount of time in  
27 entering the data into a large database that can be analyzed in order to ascertain  
28 exactly how much money was invested in Diversified and to trace exactly where that

1 money went. I anticipate that, going forward, the time spent by my professionals in  
2 connection with the reconstruction of the records and assembly of data will decrease  
3 as the database is nearing completion to the extent that the underlying data has been  
4 made available to us.

5  
6 **III.**

7 **ACCOUNTING OF RECEIVER'S RECEIPTS AND DISBURSEMENTS**

8 7. In addition to the tangible property described above, I am chargeable  
9 with receipts and disbursements described in detail in Exhibit "1" attached hereto  
10 and incorporated by this reference. Without limiting the foregoing, through July 31,  
11 2009, I received \$2,596,958.35 and disbursed \$428,860.63. As of July 31, 2009, I  
12 had a cash balance on hand of \$2,168,097.72. As of the date of this Report, I have  
13 on hand \$2,118,926.69. My cash transactions are summarized on the first page of  
14 Exhibit "1".

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16 **IV.**

17 **RECEIVER REQUESTS FOR AUTHORIZATION TO PAY FEES AND**  
18 **EXPENSES OF RECEIVER AND HIS PROFESSIONALS**

19 8. Pursuant to the terms of the Omnibus Order, I am, as Receiver,  
20 authorized to seek by application to the court, reimbursement to me and my  
21 professionals for fees and expenses incurred by us.

22 9. The fees and expenses for services rendered and costs advanced through  
23 July 31, 2009, are summarized as follows. I have negotiated with each claimant,  
24 have obtained reductions or credits where I felt it advisable, and recommend the  
25 following balances for approval and immediate payment:

1	Claimant	Time Expended in Hours	Blended Rate	Fee Claim	Costs Advanced	Balance to Be Paid
2	David A. Gill, Receiver	843.10	\$363.44	\$313,283.50	\$7,338.36	\$320,468.86
3	Danning, Gill, Diamond & Kollitz, LLP	1503.10	\$434.96	\$655,840.00	\$12,951.69	\$668,791.69
4	LECG, Inc.	3,407.50	\$283.10 <sup>2</sup>	\$964,672.00	\$13,831.41	\$978,503.41
5	Nashel Kates Nussman Rapone Ellis & Farhi	86.00	\$450.00	\$38,700.00	\$118.75	\$38,818.75
6	Reuben, Raucher & Blum	123.41	\$250.66	\$30,933.80	\$1,753.36	\$27,687.16 <sup>3</sup>
7	McNeil & Carlino	220.90	\$76.14	\$9,736.50 <sup>4</sup>	\$209	\$9,945.50 <sup>5</sup>
8	Rayburn, Cooper & Durham, P.A.	929.35	\$212.31 <sup>6</sup>	\$44,165.82 <sup>7</sup>	\$4,019.80 <sup>8</sup>	\$48,185.62

14 <sup>2</sup> LECG agreed to discount its rates as to certain data entry services so its  
15 blended hourly rate with respect to discounted hours totaling 663.00 is actually  
16 \$180.88, and its blended hourly rate with respect to the balance of its fees is \$307.80.

17 <sup>3</sup> Reuben, Raucher & Blum is holding a pre-receivership retainer of \$5,000, so  
18 the retainer amount will be applied to the balance due.

19 <sup>4</sup> This figure is calculated based upon payment of 36.11% of the \$25,000 fees  
20 incurred on the Coastal Venture matter, or \$9,027.50, less 36.11% of the \$10,000  
21 payment already made, or \$3,611, for a total owing of \$5,416.50, plus payment of all  
22 fees owing on the Uwharrie Valley Partners matter of \$4,320. There is a possibility  
23 of a lower negotiated fee.

24 <sup>5</sup> Of this sum, \$520 is attributable to pre-March 4, 2009 time; however, given  
25 the low blended rate, the amount of the write off by McNeil and Carlino as set forth  
26 in the Declaration of Peter Carlino, and in light of the small amount of pre-  
27 receivership unpaid fees, I propose to pay up to the entire balance owing.

28 <sup>6</sup> The blended rate is calculated using the total fees incurred, or \$197,309.10  
divided by the total hours spent of 929.35, rather than only on the Receiver's 36.11%  
share of the fees.

<sup>7</sup> A \$75,000 payment toward fees using funds in which Diversified had a  
36.11% interest was made, so \$27,082.50 of Diversified funds has already been  
applied to the Receiver's 36.11% share of the total fees of \$197,309.10. Therefore,  
the Receiver's share of the fees, \$71,248.32, has been reduced by the amount already  
paid, leaving a balance of \$44,165.82. There is a possibility of a lower negotiated  
fee.

1           **Receiver’s Fees and Expenses**

2           10. Attached to the Declaration of David A. Gill as Exhibit “2” is a detailed  
3 itemization of all services performed by me for whom I seek compensation. My  
4 costs in the amount of \$7,338.36 are set forth on Exhibit “3” attached to my  
5 Declaration.

6  
7           **Danning, Gill, Diamond & Kollitz, LLP**

8           11. Danning, Gill, Diamond & Kollitz, LLP (“Danning, Gill”) has been  
9 employed as my general counsel to assist me in the performance of my duties as  
10 Receiver. Danning, Gill has reviewed substantial documentation and interviewed  
11 numerous interested parties, professionals and employees to assist me in evaluating  
12 the potential assets of the estate and the transfers of assets and cash. Danning, Gill  
13 has provided legal advice regarding the liquidation of the real and personal property  
14 of Diversified, and has commenced litigation to avoid and recover certain voidable  
15 transfers made by Diversified before my appointment.

16           12. Danning, Gill has been instrumental in assisting me in identifying assets  
17 and business interests of Diversified and in communicating with counsel in  
18 connection with these assets. Danning, Gill has requested, obtained and reviewed  
19 substantial documentation which has assisted me in identifying assets, in liquidating  
20 assets, and in determining how to proceed with respect to various matters.

21           13. Danning, Gill has incurred fees in the amount of \$655,840.00 and  
22 expenses of \$12,951.69 for the time period of March 4, 2009 through July 31, 2009,  
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(...Continued)

25           <sup>8</sup> A \$1,649.01 payment toward expenses using funds in which Diversified had  
26 a 36.11% interest was made, so \$595.46 of Diversified funds has already been  
27 applied to the Receiver’s 36.11% share of the total expenses of \$12,781.12.  
28 Therefore, the Receiver’s share of the expenses, \$4,615.26, has been reduced by the  
amount already paid, leaving a balance of up to \$4,019.80.

1 and I request authority to pay Danning, Gill said amounts. Detailed time entries and  
2 cost entries are attached as Exhibits "5" and "6", respectively, to the Declaration of  
3 Kathy Bazoian Phelps attached hereto.

4  
5 **LECG, Inc.**

6 14. LECG, LLC ("LECG") has been employed as my financial advisors,  
7 forensic auditors, and accountants, effective March 4, 2009, for the purpose of  
8 assisting me in the administration of the estate, investigating allegations of fraudulent  
9 activity, analyzing transactions, investigating transfers of funds and/or various  
10 investments, assisting me in the identification of assets, including causes of action;  
11 assisting me in the pursuit of any litigation I may pursue, including providing any  
12 expert witness testimony that may be necessary, performing any necessary tax work  
13 and other analysis which is required to properly administer the estate and conclude  
14 the case; assisting in preparation of federal and state income tax returns for the  
15 estate; communicating with taxing authorities on behalf of the estate; analyzing and  
16 reconciling loans, payoffs, etc., analyzing and reconciling investor accounts, deeds of  
17 trusts, assignments, etc., cash tracing and forensic accounting, claims analysis,  
18 reconciliation and verification; and assisting with such other accounting services  
19 requested by me.

20 15. LECG has provided substantial services in reconstructing the records of  
21 Diversified, which has been an extremely difficult and time-consuming process. A  
22 detailed explanation regarding LECG's efforts in this regard is set forth in the  
23 Declaration of David Callaghan attached hereto.

24 16. LECG has incurred fees in the amount of \$964,672.00 and expenses of  
25 \$13,831.41 for the time period of March 4, 2009 through July 31, 2009, and the  
26 Receiver requests authority to pay LECG said amounts. Detailed time entries and  
27 cost entries and summaries are attached as Exhibits "7", "8", "9" and "10" to the  
28 Declaration of David Callaghan attached hereto.

1           **Nashel Kates Nussman Rapone Ellis & Farhi, LLP**

2           17. I employed Jack Zakim, Esq., Nashel Kates Nussman Rapone Ellis &  
3 Farhi, LLP ("NK") as special counsel in New Jersey to assist me in the performance  
4 of my duties as Receiver. Said counsel have satisfactorily completed their services  
5 as to sale of real property at 174 Upper Mountain Road, Montclair, New Jersey, and  
6 most of the personal property located thereat, but their services are still needed in  
7 connection with other personal property, a second residential real estate property  
8 located in New Jersey and other transactions.

9           18. NK has incurred fees in the amount of \$38,700.00 and expenses of  
10 \$118.75 for the time period of March 4, 2009 through June 30, 2009, and the  
11 Receiver requests authority to pay NK said amounts. Detailed time entries and cost  
12 entries are attached as Exhibit "11" to the Declaration of Jack Zakim attached hereto.

13  
14           **Reuben, Raucher & Blum**

15           19. I have employed Reuben, Raucher & Blum ("RRB) as special counsel in  
16 connection with litigation pending to collect funds which I believe to be owing to the  
17 Receivership Defendants from Mydonose USA. RRB was representing the  
18 Receivership Defendants prior to my appointment as Receiver in connection with the  
19 litigation. RRB has incurred fees in the amount of \$30,933.80 and expenses of  
20 \$1,753.36 for the time period of March 4, 2009 through July 31, 2009. RRB is  
21 holding a retainer of \$5,000 so I therefore request authority to pay RRB fees of  
22 \$25,933.80, in addition to seeking authorization for RRB to apply its \$5,000 retainer,  
23 in addition to its expenses of \$1,753.36. Detailed time entries and cost entries are  
24 attached as Exhibit "12" to the Declaration of Stephen L. Raucher attached hereto.

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26           **MacNeill & Carlino, PLLC**

27           20. I have employed MacNeill & Carlino ("M&C") as special counsel in  
28 North Carolina to assist in the performance of my duties. M & C was representing

1 Diversified prior to my connection with foreclosures of two parcels of real property  
2 located in North Carolina and litigation related thereto. One foreclosure was in  
3 connection with an obligation owed by Coastal Ventures, and the services provided  
4 in connection therewith are described more fully in the category identified as L24 in  
5 the Declarations of David A. Gill and Kathy Bazoian Phelps attached hereto. With  
6 respect to the Coastal Ventures matter, Diversified is a co-lender in connection with  
7 that transaction, having loaned \$1.3 million along with Reprop Financial which  
8 loaned \$2.3 million. Diversified and Reprop had agreed to share the legal costs in  
9 connection with this transaction proportional to their investments. Accordingly, my  
10 share of the fees and costs in connection with this matter is 36.11%.

11 Reprop has previously paid to M & C fees of \$10,000, out of jointly held funds. The  
12 amounts for which I herein request approval are my 36.11% share of the total fees  
13 and costs in connection with the Coastal Venture matter.

14 M & C has also provided services in connection with a loan transaction with  
15 Uwharrie Partners, where I have also been pursuing foreclosure proceedings in North  
16 Carolina. Diversified was the only lender on this transaction so I am responsible for  
17 100% of the fees and costs incurred in connection with that matter.

18 I anticipate that I will continue to need local counsel in North Carolina to  
19 assist me in obtaining relief from stay, dealing with any reorganization plan, and to  
20 proceed in due course with the foreclosures on real property located in that state on  
21 which Diversified hold deeds of trust. Additionally, to the extent that it becomes  
22 necessary for me to sell any of the real property in North Carolina, I further  
23 anticipate that I may require local counsel to advise me with respect to local rules  
24 and procedures and to handle closing and/or sale transactions.

25 Applying the 36.11% calculation to the portion of the fees and costs relating to  
26 the Coastal Ventures matter, M & C has reduced its charges to \$25,000, and I  
27 propose to pay M & C my 36.11% of those fees in the amount of \$9,027.50 for the  
28 time period of March 4, 2009 through July 31, 2009, less 36.11% of the \$10,000

1 already paid to M & C, for a total of \$5,16.50 remaining to be paid on the Coastal  
2 Venture matter. Additionally, I propose to pay fees of \$4,320 to M&C in connection  
3 with the services provided on the Uwharrie Partners matter. A narrative summary of  
4 all of the services provided and detailed time entries and cost entries for the  
5 Uwharrie Partners matter are attached as Exhibits "13" and "14", respectively, to the  
6 Declaration of Peter N. Carlino attached hereto.

7

8 **Rayburn Cooper & Durham**

9 21. I have also employed the firm of Rayburn Cooper & Durham ("RCD") as  
10 special counsel in North Carolina to assist in connection with the Coastal Ventures  
11 obligation. RCD has provided services in connection with obtaining relief in the  
12 bankruptcy case filed by the obligor on the note in favor of Diversified secured by a  
13 deed of trust against property in North Carolina. Diversified is a co-lender in  
14 connection with that transaction, having loaned \$1.3 million along with Reprop  
15 Financial which loaned \$2.3 million. Diversified and Reprop had agreed to share the  
16 legal costs in connection with this transaction proportional to their investments.  
17 Accordingly, my share of the fees and costs in connection with this matter is 36.11%.  
18 Reprop has previously paid to RCD fees of \$75,000 and costs of \$1,649.01, out of  
19 jointly held funds. The amounts for which I herein request approval are my 36.11%  
20 share of the total fees and costs.

21 22. I therefore proposed to pay RCD fees of \$44,165.82 and costs of  
22 \$4,019.80 as my 36.11% share, and I request authority to pay RCD said amounts.  
23 Detailed time entries and cost entries are attached as Exhibits "15" to the Declaration  
24 of G. Kirkland Hardyman attached hereto.

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V.

**PAYMENT OF OTHER EXPENSE**


23. Mayer & Glassman (“M&G”) represented DLG and certain affiliates prior to my appointment. I determined, and this court in the Omnibus Order approved, that I could compensate M&G for time reasonably expended at my specific instance and request in gathering information for my administration, including reviewing with my professionals all files and records maintained by it. I have not retained M&G as my counsel, but have agreed to pay the firm for its time in responding to my inquiries. M&G has incurred fees in the amount of \$16,007.98 and costs of \$30.60 in assisting me. M&G’s invoice is attached as Exhibit “4” to the Declaration of David A. Gill. While I believe that I am already authorized to pay M&G pursuant to the Omnibus Order, I feel it appropriate to advise the parties in interest of my intention before doing so.

VI.

**CONCLUSION.**

Based upon the foregoing, I respectfully request (a) approval of this First Report And Account; (b) authorization to pay to myself and my professionals and Mayer & Glassman the amounts requested by us on account of services rendered through July 31, 2009; and (c) for all other appropriate relief.

Dated: August 26 2009

  
\_\_\_\_\_  
David A. Gill  
Receiver