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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 vs.
14

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

17 Defendants,

18 and

19 TINA M. PLACOURAKIS,

20 Relief Defendant.
21

Case No. CV09-1533-R-JTLx

**NOTICE OF MOTION AND
MOTION FOR APPROVAL OF:**

- (1) SALE OF 31610 BROAD
BEACH ROAD, MALIBU,
CALIFORNIA, FREE AND
CLEAR OF LIENS,
CLAIMS AND
ENCUMBRANCES; AND**
- (2) PAYMENT OF BROKERS'
COMMISSIONS,
UNDISPUTED LIENS AND
COSTS THROUGH
ESCROW;**

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

Date: August 3, 2009
Time: 10:00 a.m.
Place: Courtroom 8
312 North Spring Street
Los Angeles, CA

25 PLEASE TAKE NOTICE that David A. Gill, the Permanent Receiver (the
26 "Receiver") in the above-captioned case (the "SEC Action"), hereby moves the
27 Court for an order approving: (1) Sale of Real Property Located at 31610 Broad
28 Beach Road, Malibu, California, Free and Clear of Liens, Claims and

1 Encumbrances; and (2) Payment of Brokers' Commissions, Undisputed Liens and
2 Costs (the "Sale Motion"). The hearing on the Sale Motion will take place on
3 August 3, 2009, at 10:00 a.m. in the above-referenced courtroom.

4 The Sale Motion requests an order:

5 1. approving the sale to either the Polisky Living Trust or an overbidder
6 (the "Purchaser") of the property located at 31610 Broad Beach Road, Malibu,
7 California, for the purchase price of no less than \$5,700,000 pursuant to the terms
8 set forth in Exhibit "1" to the Declaration of David A. Gill in support of the Sale
9 Motion (the "Gill Declaration");

10 2. approving overbid procedures, to the extent there exist any overbidders,
11 set forth in the *Statement re: Overbids* attached as Exhibit "2" to the Declaration of
12 David A. Gill in support of the Sale Motion;

13 3. authorizing the Receiver to make reasonable adjustments, through
14 escrow, as agreed to between the Receiver and Purchaser;

15 4. authorizing the Receiver to convey title to the Property as "David A.
16 Gill, solely in his capacity as Permanent Receiver for MMHIM, Inc., in the matter of
17 Securities and Exchange Commission vs. Diversified Lending Group, Inc., Applied
18 Equities, Inc., Bruce Friedman and Tina M. Placourakis, U.S.D.C. Case No. CV 09-
19 01533-R-JTLx;"

20 5. authorizing the Receiver to pay all undisputed liens and encumbrances
21 appearing on the Property, directly through escrow, and all undisputed portions of
22 any real property taxes, and all other customary closing costs and charges;

23 6. confirming that the sale of the Property is free and clear of all liens,
24 claims or encumbrances against the Property, apparent or of record, including any
25 disputed liens, claims or encumbrances, which disputed liens, claims and
26 encumbrances, if any, will attach to the sale proceeds with the same force, effect,
27 validity and priority, if any, that they have as against the Property, and 110% of said

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1 disputed amount shall remain in escrow pending further Court order or written
2 agreement of the parties to the dispute;

3 7. confirming that the Purchaser or its assignee is a good faith purchaser
4 of the Property;

5 8. authorizing the Receiver to pay the real estate brokers' commissions in
6 an amount equal to 4.5% of the purchase price;

7 9. authorizing the Receiver to execute all documents and otherwise take
8 all actions the Receiver deems necessary and appropriate to close the sale of the
9 Property;

10 10. confirming that the recordation of this Order with the Los Angeles
11 County Recorder's Office shall constitute a discharge, termination and cancellation,
12 with respect to the Property, of all of the liens, claims, and encumbrances, without
13 the need for re-conveyance or release of such liens, claims, encumbrances or other
14 interests; and

15 11. confirming that the form and manner of notice of the sale and the
16 Motion provided by the Receiver is appropriate.

17 This Motion is made on the grounds that: (1) the Property may be sold free
18 and clear of liens and interests because the liens that are not disputed will be paid
19 directly out of escrow and the remaining liens are in bona fide dispute; (2) the
20 purchase price is fair and reasonable and the sale is consistent with the best interests
21 of the creditors and the estate; and (3) the payments of any undisputed liens, claims
22 and costs of sale are necessary to effect the sale.

23 PLEASE TAKE FURTHER NOTICE THAT the proposed sale is subject to
24 overbid. The Receiver is recommending that the Court adopt the following overbid
25 procedures: Any party wishing to tender an overbid must deliver to the Receiver a
26 cashier's check or certified check in the sum of \$171,000.00 payable to "David A.
27 Gill, Receiver" delivered to his office not later than 2:00 p.m. on July 31, 2009,
28 along with proof of the financial ability to close the sale, and complete and execute

1 the *Request to Qualify as Overbidder* form attached as Exhibit "2" to the Gill
2 Declaration. The deposit shall be nonrefundable in the event that the Court confirms
3 the sale to that party and the party fails to close the sale timely, for any reason
4 whatsoever. The minimum initial overbid shall be \$5,800,000.00, with subsequent
5 overbids in increments of not less than \$50,000 on terms substantially similar to the
6 *Overbid Sale Agreement* attached as Exhibit "2" to the Gill Declaration, and shall
7 close the escrow within thirty-five (35) calendar days after the entry date of an order
8 approving the sale.

9 The Receiver also proposes that if another bidder consents thereto, the Court
10 confirm a back-up buyer so that, in the event that the successful overbidder does not
11 close within 35 days after the date of entry of an order approving the sale, the
12 Receiver may retain the deposit of the original buyer and sell the Property to the
13 back-up buyer for the amount of such back-up buyer's last bid. Subject to Court
14 approval, the Receiver retains sole discretion in accepting and rejecting all overbids.
15 The Receiver also seeks a Court ruling that the party to whom the Court confirms
16 the sale and any backup buyer are good faith purchasers.

17 The Sale Motion is based on the Memorandum of Points and Authorities, the
18 Declaration of David A. Gill, the exhibits attached thereto, and upon such other
19 grounds as may properly be presented to the Court upon request. A separate Order
20 approving the Sale Motion has been lodged with the Court.

21 PLEASE TAKE FURTHER NOTICE that any objections to the proposed sale
22 shall be in writing, filed with the Court, and served upon the Receiver not later than
23 fourteen (14) days prior to the date of hearing.

24 PLEASE TAKE FURTHER NOTICE THAT pursuant to the prior order of
25 this Court entered May 4, 2009 (the "Omnibus Order"), this notice and Sale Motion
26 will be served upon the approved Limited Service List.

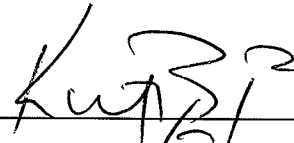
27 PLEASE TAKE FURTHER NOTICE that any interested party may request
28 paper or electronic copies of the entire service package by contacting the Receiver in

1 writing, and the Receiver shall comply with all such requests by first-class mail.
2 This Notice is given pursuant to the Sale Procedure Order. A copy of the Omnibus
3 Order and Sale Motion can be viewed by accessing the website of the Receiver:
4 www.diversifiedreceivership.com. Inquiries may be directed to the office of the
5 Receiver at the above address, attention Ms. Jessica Ramos, Paraprofessional.
6

7 Dated: July 10, 2009

DANNING, GILL, DIAMOND & KOLLITZ, LLP

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9 By: _____


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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I. INTRODUCTION.**

4 David A. Gill is the duly appointed Receiver for Diversified Lending
5 Group, Inc. (“DLG”), and Applied Equities, Inc. (“AEI”), and their subsidiaries and
6 affiliates, including but not limited to, MMHIM, Inc., DLG International, and
7 SunWest Bottlers. Declaration of David A. Gill (“Gill Decl.”) at ¶ 1. The Receiver
8 hereby seeks this Court’s confirmation of the sale of the real property located at
9 31610 Broad Beach Road, Malibu, California (the “Property”), with overbid
10 procedures, and confirmation of payment of real estate brokers’ sales commissions,
11 undisputed liens and costs through escrow.

12
13 **II. RELEVANT FACTS.**

14 **A. Procedural History**

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

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

25 On March 4, 2009, this Court granted the TRO Application and, among other
26 things, appointed David A. Gill as Temporary Receiver. Mr. Gill, along with his
27 counsel, accountants and field personnel, took possession of the business premises

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1 of the Defendants DLG and AEI (the "Receivership Defendants") in Sherman Oaks,
2 California. Gill Decl. at ¶ 5.

3 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 which, among other things, appointed David A.
6 Gill as the Permanent Receiver. Gill Decl. at ¶ 6."

7 On or about March 31, 2009, the Court signed another Order (the "MMHIM
8 Order") clarifying that MMHIM, Inc. ("MMHIM") is a wholly owned subsidiary of
9 the Receivership Defendants and that its assets are subject to administration by the
10 Receiver pursuant to the Order of March 4, 2009, as amended and supplemented by
11 the Order of March 10, 2009. Gill Decl. at ¶ 7; see Exhibit "3" to the Gill Decl.

12 On May 4, 2009, this Court entered its Order Granting Motion of Receiver for
13 Instructions Re: (1) Notice Procedures; (2) Procedures for the Use, Sale or Other
14 Disposition of Assets; (3) Employment of Legal Counsel, Accountants, Appraisers,
15 Auctioneers and Brokers; and (4) Payment of Priority Wage Claims, inter alia,
16 authorizing employment of Coldwell Banker and other brokers, as real estate broker,
17 and establishing procedures for sales and notices (the "Omnibus Order"). Gill Decl.
18 at ¶ 8; see Exhibit "4" to the Gill Decl.

19 Pursuant to the March 10, 2009, order and the MMHIM Order, the Receiver's
20 duties include, among other things, liquidating property of the Receivership
21 Defendants and their wholly owned subsidiaries, if appropriate, and paying all costs
22 associated with such liquidation. This Motion relates to the sale of one such asset.
23 Gill Decl. at ¶ 9.

24

25 B. The Property and Encumbrances of Record

26 The Property consists of a single family dwelling commonly described as a
27 two-story bluff top home particularly described in Exhibit "5," pages 3 and 4,
28 attached to the Gill Declaration and incorporated herein. The improvements thereon

1 are generally described as a 3,467 square foot residence with a pool, spa, two-story
2 guest house, three car garage, and a wood deck with step down to beach level. Gill
3 Decl. at ¶ 10; see Exhibit "5" to the Gill Decl.

4 As of March 4, 2009, the Property was encumbered by those liens and
5 interests described in the Title Report. MMHIM is vested with record title to the
6 Property. Gill Decl. at ¶ 11; see Exhibit "5" to the Gill Decl.

7 When the Receiver took possession of the Property, the Property was in the
8 process of being remodeled and was subject to mechanics' and materialmen's liens
9 (collectively the "Contractor Liens"). Gill Decl. at ¶ 12; see Exhibit "5," at pp. 8, 9,
10 to the Gill Decl.

11 According to the Title Report and other documents available to the Receiver,
12 the following liens are apparent or recorded against the Property:

<u>Date of Recordation</u>	<u>Claimant</u>	<u>Amount</u>	<u>Instrument No.</u>
January 28, 2009	Gerald J. Marcil Palos Verdes Investments, Inc. 43-D Malaga Cove Plaza Palos Verdes Estates, CA 90274	\$2,166,870.19	20090109511
March 4, 2009	Bilden Company and Jack Monroe c/o Mark Anchor Albert, Esq. Law Offices of Mark Anchor Albert 333 S. Grand Avenue, 25th Floor Los Angeles, CA 90071	\$165,891.97	09-421297
Not Recorded	New Century Iron Artisans 8904 Lankershim Boulevard Sun Valley, CA 91352	\$12,303.00	n/a
Not Recorded	Eclipse Heating & Air 7302 Canby Avenue Reseda, CA 91335	\$12,225.00	n/a
March 25, 2009	Security Network, Inc. 2701 E. Chapman Avenue, Suite 105 Fullerton, CA 92831	\$11,380.00	09-430172
May 1, 2009	Mike's Building Corp. 16046 Blythe Street Van Nuys, CA 91406	\$8,677.52	09-639453
Not Recorded	Blackwood Doors P.O. Box 291010 Los Angeles, CA 90029	\$8,634.00	n/a

1	March 26, 2009	Mega Electric 4825 Murietta Avenue Sherman Oaks, CA 91423	\$7,750.00	09-434130
2	March 25, 2009	Authentic Woodworks 11539 Tuxford Street Sun Valley, CA 91352	\$5,495.00	09-428983
3	Not Recorded	California Solar 65 W. Easy Street Suite 103 Simi Valley, CA 93065	\$2,900.00	n/a
4	March 25, 2009	YB Construction Services/ S.A.L Plumbing 3350 Coy Drive Sherman Oaks, CA 91423	\$2,225.00	09-433843
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10 Gill Decl. at ¶ 14.

11 By this Motion, the Receiver is requesting authority to sell the Property free
12 and clear of all liens, claims and encumbrances and to consummate the sale by
13 selling and transferring title to the Property to the Purchaser pursuant to the
14 MMHIM Order authorizing the sale of MMHIM assets and to allow all liens to
15 attach to the sale proceeds. The Receiver proposes to pay all undisputed liens and
16 claims directly through escrow by retaining 110% of the amount of all disputed
17 amounts in escrow to secure payment of the disputed liens and claims, pending
18 resolution by further Court order or agreement of the parties to the disputed claims.

19 Gill Decl. at ¶ 15.

20

21 C. Proposed Treatment of Liens and Payment of Other Items
22 through Escrow

23 The Receiver has contacted the lienholders and believes that all issues relating
24 to the amounts of the claims have been resolved. Therefore, the Receiver is not
25 aware of any disputed liens against the Property; however, in an abundance of
26 caution, the Receiver requests Court authority to provide for a reserve in the amount
27 of 110% of any disputed amount to protect the estate in the event a lien or claim is
28 made against the Property prior to, or at the time of, the sale.

1 1. Payment of Undisputed Liens and Customary Charges

2 The Receiver has resolved disputes as to amounts of the Contractor Liens, and
3 to negotiate for the completion of the project, with a portion of the Contractor Liens
4 to be paid by the Receiver upon completion of services, and the balance to be paid
5 directly through escrow. Gill Decl. at ¶ 12. Likewise, the Receiver has resolved the
6 dispute as to the amount of the Marcil lien and that lien will be satisfied directly
7 through escrow. Gill Decl. at ¶ 15. The Receiver seeks authority to pay all
8 undisputed and settled claims, with all customary costs and charges, directly through
9 escrow, without further order of the Court. The settled undisputed lien amounts, in
10 some instances, are less than the recorded amount and as a result, the Receiver will
11 pay only the settled amounts not necessarily the recorded amounts.

12 2. Payment of All Disputed Liens from Proceeds

13 With respect to any disputed liens, to the extent there are any, which may be
14 claimed against the Property at the time of sale closing, all such disputed liens will
15 attach to proceeds from the sale since it is more than likely that the aggregate value
16 of any such liens is far less than the purchase price. Gill Decl. at ¶ 13.
17 Consequently, the Receiver proposes to satisfy any such disputed liens from sale
18 proceeds by retaining in escrow funds in the amount of 110% of disputed amounts to
19 secure payment of any disputed claims. Amounts to satisfy disputed liens, shall
20 remain in escrow pending further Court order or, in the event that the parties to the
21 disputed liens, claims or encumbrances reach a consensual written agreement, then
22 no further Court order shall be required.

23
24 D. Payment of Commissions to Real Estate Brokers

25 The sale also contemplates the payment of real estate brokers' commissions
26 from escrow in connection with the proposed sale and pursuant to the Sale and
27 Purchase Agreement. Pursuant to the Omnibus Motion, the Receiver is authorized
28 to employ Coldwell Banker and other brokers in carrying out the Receiver's duty to

1 administer the receivership estate. The Listing Agreement provides that an
2 aggregate commission of 4.5% of the purchase price will be paid to the real estate
3 brokers directly from escrow. Gill Decl. at ¶ 17; see Exhibit “6” to the Gill Decl.

4 As part of this Motion, the Receiver hereby moves this Court confirm
5 payment of the aggregate commission of 4.5% of the purchase price to the
6 Receiver’s and Purchasers’ brokers pursuant to the Omnibus Order at paragraph
7 twelve.

8

9 E. Marketing Efforts for the Sale of the Property

10 On or about March 30, 2009, the Receiver entered into a Listing Agreement
11 with Prudential Malibu Realty and Coldwell Banker (the “Brokers”) for the
12 marketing of the Property. Pursuant to the Listing Agreement, all brokers’
13 commissions on the sale of the Property was to be 4.5% of the purchase price. Gill
14 Decl. at ¶ 17; see Exhibit “6” to the Gill Decl.

15 On or about April 10, 2009, the Property was listed in the Multiple Listing
16 Service (“MLS”) thereby giving notice to the public of the sale. In addition, the
17 Brokers placed full signage at the Property and advertised the Property in the Los
18 Angeles Times, The Malibu Times, email flyers, and full-color brochures. The
19 Brokers also listed the Property on the following websites:
20 31610BroadBeachRoad.com, prumalibu.com, realtor.com, trulia.com, yahoo.com,
21 Frontdoor.com, aol.com, cyberhomes.com, themls.com, lycos.com, oodle.com,
22 hotpads.com, homesekers.com, and realestate.com. In addition, the Receiver
23 posted the Property on diversifiedreceivership.com. The Brokers accompanied
24 prospective buyers’ agents with their respective clients on fourteen (14) showings to
25 the Property resulting in three offers. Gill Decl. at ¶ 18.

26 The initial listing price of the Property was \$6,500,000.00. After
27 approximately eight weeks of many interested inquiries but no serious offers, the
28 listing price was reduced to \$5,950,000.00. The Receiver then received two

1 competing offers and after a series of offers and counteroffers, accepted (subject to
2 Court approval) the offer by the Polisky Living Trust ("Polisky"), upon the terms
3 and conditions set forth in that certain Counter-Offer dated June 23, 2009. Polisky's
4 initial offer was for \$5,300,000.00, and after two rounds of counter-offers, the
5 Receiver accepted an offer in the amount of \$5,700,000.00. Gill Decl. at ¶ 19; see
6 Exhibit "1" to the Gill Decl.

7
8 F. Terms of Proposed Sale

9 The purchase price of the Property is to be no less than \$5,700,000.00 subject
10 to better bids received from Qualified Overbidders, and this Court's confirmation.
11 The purchase price is subject to any credits for repairs as agreed to between the
12 Receiver and Purchaser without further order of the Court. The proposed sale of the
13 Property is on an "as is" and "where is" basis, without any warranties or recourse
14 whatsoever, except that title insurance is to be provided to cover normal title
15 conveyances. Specifically, aside from the normal title contingencies, the sale will
16 not include any contingencies. Gill Decl. at ¶ 21.

17
18 G. Proposed Overbid Procedure

19 The Receiver has received at least one other offer in an amount less than that
20 of Polisky. The Receiver believes that this sale should be subject to overbid, to
21 which condition Polisky has agreed. Gill Decl. at ¶ 22. Pursuant to the Omnibus
22 Order at paragraph 19(c), the Receiver respectfully recommends that a suitable sale
23 bidding procedure is as follows, with the recognition that the Court may, at or before
24 such hearing, prescribe an alternative procedure for taking bids:

25 Sale shall be conducted in open court and if there are Qualified Overbidders
26 present at the sale hearing, they will have an opportunity to bid on the Property
27 during the hearing on this Motion. The hearing may be continued from time to time
28 as the Court shall determine.

1 The Receiver respectfully recommends that overbid procedures should be
2 substantially as set forth in the attached *Statement of Procedures for Overbidding on*
3 *the Real Property Located at 31610 Broad Beach Road, Malibu, California 90265*
4 (the "Statement re: Overbids"). Gill Decl. ¶ 22; see Exhibit "2" to the Gill Decl.
5 The Statement re: Overbids is incorporated herein by reference. Specifically, the
6 proposed overbid procedures are as follows, without limitation of the Court's power
7 to alter the same:

8 1. A Qualified Overbidder is a person or entity who or which shall
9 have delivered to the Receiver not later than two court days prior to the Sale Hearing
10 the *Request to Qualify as Overbidder* including (i) a deposit in the form of a cashiers
11 check or certified check, in the amount of not less than \$171,000.00, payable to the
12 Receiver or to cash and endorsed to the Receiver; to be returned if the depositor is
13 not the successful bidder; and (ii) proof to the satisfaction of the Receiver, in his sole
14 discretion, of the ability of the Overbidder to consummate the Sale. Gill Decl. at ¶
15 23; see Exhibit "2," pp. 3 and 4, to the Gill Decl.

16 2. The Receiver shall report to the Court at the commencement of
17 the hearing whether or not there are Qualified Overbidders. If there are none, the
18 Court may confirm the sale to Polisky.

19 3. If there is one or more Qualified Overbidder, overbids must be on
20 terms substantially identical to the *Overbid Sale Agreement*. Among the terms of
21 sale, but without limitation, are that the successful bidder is deemed to have
22 submitted to the exclusive jurisdiction of this court to interpret and enforce the
23 Court's order relative to the sale and that if the successful bidder fails to
24 consummate the transaction for any reason other than the fault of the Seller
25 including inability to deliver the Property, the deposit theretofore given will be
26 forfeited as liquidated damages. Gill Decl. at ¶ 24; see Exhibit "2" to the Gill Decl.

27 4. Any Qualified Overbidders, to the extent there are any, may bid
28 by completing the *Overbid Sale Agreement* or by making bids at the hearing on this

1 Motion, with the initial overbid set at no less than \$5,800,000.00. Gill Decl. at ¶ 24;
2 see Exhibit “2” to the Gill Declaration. Thereafter the Purchaser or Qualified
3 Overbidders may increase their bids, but not in increments of less than \$50,000.00.

4 5. At the conclusion of the bidding process, the Receiver shall
5 recommend to the Court for confirmation of the offer the Receiver deems to be the
6 best offer theretofore received.

7 6. If non-winning bidders are willing to maintain their proposals as
8 a “back up” offer, the Receiver recommends that all such back-up bids be
9 recognized and approved by the Court in the event the sale with the best bidder is
10 not consummated.

11
12 H. Good Faith Purchaser

13 The Purchase and Sale Agreement with Polisky was reached in response to
14 the Brokers’ marketing efforts and via arms-length negotiations between the parties.
15 To the best of the Receiver’s knowledge, Polisky has no relationship to DLG, AEI,
16 MMHIM or Mr. Friedman. Polisky has made an offer to purchase the Property
17 close to its fair value. Gill Decl. at ¶ 19. The Receiver requests a finding that
18 Polisky, or any successful overbidder or their assignee, is a good faith purchaser.

19
20 I. Notice of Motion

21 Pursuant to the Omnibus Order, the Receiver will serve notice of this Motion
22 by mail to the Limited Service List and by posting the notice and the motion on the
23 Receiver’s website at www.diversifiedreceivership.com, on the Receiver’s law firm
24 website, and at the office of the Clerk of the Bankruptcy Court for the Central
25 District of California pursuant to Local Rule 6007-1(f) of said Bankruptcy Court
26 made applicable hereto by Local Rule 66-8 of this Court and the Omnibus Order at
27 paragraph 20. The Receiver will also advertise the sale in the Wall Street Journal

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1 two (2) times between July 15, 2009, to the date of the hearing on this Motion. Gill
2 Decl. at ¶ 26.

4 III. ARGUMENT

5 A. The Sale is in the Best Interests of the Estate and its Creditors 6 and Should Be Approved

7 The Local Rules for the District Court for the Central District of California
8 provide that: "Except as otherwise ordered by the Court, a receiver shall administer
9 the estate as nearly as possible in accordance with the practice in the administration
10 of estates in bankruptcy." See Local Rule 66-8. In addition, this Court's Omnibus
11 Order states that "Except as otherwise modified herein, the provisions of the
12 Bankruptcy Code and the Federal Rules of Bankruptcy Procedure governing the use
13 or disposition of property shall apply for these types of matters involving the
14 receivership estate." See Exhibit "4," ¶ 20, to the Gill Decl.

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

21 A trustee's duties in liquidating the assets of the estate require that a trustee
22 sell estate property if doing so will benefit the estate and its creditors. The Receiver
23 believes that the proposed conduct of sale of the Property is the best method by
24 which to maximize the value of the estate's interest in the Property. The Property,
25 which has been actively marketed, was initially listed for sale at \$6,500,000.00.
26 After approximately eight (8) weeks of many interested inquiries but no serious
27 offers, the listing price was reduced to \$5,950,000.00. The Receiver then received
28 two competing offers and after a series of offers and counteroffers, accepted (subject

1 to Court approval) the offer by Polisky, upon the terms and conditions set forth in
2 that certain Sale and Purchase Agreement attached as Exhibit "1" to the Gill
3 Declaration. The initial offer received by Polisky was for \$5,300,000.00, and after
4 two rounds of counteroffers, Polisky made an offer of \$5,700,000.00. The Receiver
5 negotiated, through the Brokers, with Polisky and, as a result of such arms-length
6 negotiations, the Receiver has agreed to sell the Property to Polisky for
7 \$5,700,000.00, which the Receiver believes is a reasonable price for the Property.

8 **B. The Sale Should Be Free and Clear of All Disputed Liens**

9 Pursuant to the Bankruptcy Code section 363(f) and made applicable hereto
10 by Local Rule 66-8 of this Court and this Court's Omnibus Order, "the trustee may
11 sell property ...free and clear of any interest in such property of an entity other than
12 the estate, only if – ... (3) such interest is a lien and the price at which such property
13 is to be sold is greater than the aggregate value of all liens on such property." 11
14 U.S.C. § 363(f)(3). In this case, the Receiver proposes to pay any undisputed liens,
15 to the extent there are any, from sale proceeds. This includes the payment of all
16 undisputed liens which may have attached to the Property after the filing of this
17 Motion but prior to sale closing. The Receiver proposes to pay all such undisputed
18 liens from sale proceeds and as a result respectfully requests that this Court make a
19 finding that the sale is free and clear of all disputed liens and to the extent there are
20 any disputed liens, all such liens shall attach to sale proceeds since the purchase
21 price is greater than the aggregate value of all liens on the Property.

22
23 **IV. CONCLUSION**

24 Based on the foregoing, the Receiver respectfully requests that the Court:

25 1. approve the sale to either the Polisky Living Trust or an overbidder (the
26 "Purchaser") of the property located at 31610 Broad Beach Road, Malibu,
27 California, for the purchase price of no less than \$5,700,000 pursuant to the terms

28 ///

1 set forth in Exhibit "1" to the Declaration of David A. Gill in support of the Sale
2 Motion;

3 2. approve overbid procedures, to the extent there exist any overbidders,
4 set forth in the Statement re: Overbids attached as Exhibit "2" to the Declaration of
5 David A. Gill in support of the Sale Motion;

6 3. authorize the Receiver to make reasonable adjustments, through
7 escrow, as agreed to between the Receiver and Purchaser;

8 4. authorize the Receiver to convey title to the Property as "David A. Gill,
9 solely in his capacity as Permanent Receiver for MMHIM, Inc., in the matter of
10 Securities and Exchange Commission vs. Diversified Lending Group, Inc., Applied
11 Equities, Inc., Bruce Friedman and Tina M. Placourakis, U.S.D.C. Case No. CV 09-
12 01533-R-JTLx;"

13 5. authorize the Receiver to pay all undisputed liens and encumbrances
14 appearing on the Property, directly through escrow, and all undisputed portions of
15 any real property taxes, and all other customary closing costs and charges;

16 6. confirm that the sale of the Property is free and clear of all liens, claims
17 or encumbrances against the Property, apparent or of record, including any disputed
18 liens, claims or encumbrances, which disputed liens, claims and encumbrances, if
19 any, will attach to the sale proceeds with the same force, effect, validity and priority,
20 if any, that they have as against the Property and 110% of said disputed amount shall
21 remain in escrow pending further Court order or written agreement of the parties to
22 the dispute;

23 7. confirm that the Purchaser or its assignee is a good faith purchaser of
24 the Property;

25 8. authorize the Receiver to pay the real estate brokers' commissions in an
26 amount equal to 4.5% of the purchase price;

27 ///

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1 9. authorize the Receiver to execute all documents and otherwise take all
2 actions the Receiver deems necessary and appropriate to close the sale of the
3 Property;


4 10. confirm that the recordation of this Order with the Los Angeles County
5 Recorder's Office shall constitute a discharge, termination and cancellation, with
6 respect to the Property, of all of the liens, claims, and encumbrances, without the
7 need for re-conveyance or release of such liens, claims, encumbrances or other
8 interests; and

9 11. confirm that the form and manner of notice of the sale and the Motion
10 provided by the Receiver is appropriate.

11
12 Dated: July 10, 2009

DANNING, GILL, DIAMOND & KOLLITZ, LLP

13
14 By:



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

1 **DECLARATION OF DAVID A. GILL**

2
3 I, David A. Gill, declare as follows:

4 **Background**

5 1. I am the Receiver (“Receiver”) appointed by this Court for the property
6 of Diversified Lending Group, Inc. (“DLG”), and Applied Equities, Inc. (“AEI”),
7 and their subsidiaries and affiliates, including but not limited to, MMHIM, Inc.
8 (“MMHIM”), DLG International, and SunWest Bottlers (collectively the
9 “Receivership Defendants”).

10 2. I have personal knowledge of the facts in this declaration and, if called
11 as a witness, I could competently testify to these facts. Furthermore, I have read the
12 attached Sale Motion and incorporation herein by this reference all facts alleged in
13 the Sale Motion.

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

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

24 5. On March 4, 2009, this Court granted the TRO Application and, among
25 other things, appointed me as Temporary Receiver. I, along with my general
26 counsel, accountants and field personnel, took possession of the business premises
27 of the Defendants DLG and AEI (the “Receivership Defendants”) in Sherman Oaks,
28 California.

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

5 7. On or about March 31, 2009, the Court signed another Order clarifying
6 that MMHIM, Inc. ("MMHIM"), among other entities, is a wholly owned subsidiary
7 of the Receivership Defendants and that its assets are subject to administration by
8 the Receiver pursuant to the Order of March 4, 2009, as amended and supplemented
9 by the Order of March 10, 2009 (the "MMHIM Order"). A true and correct copy of
10 the MMHIM Order is attached hereto as Exhibit "3" and incorporated herein by this
11 reference.

12 8. On May 4, 2009, this Court entered its Order Granting Motion of
13 Receiver for Instructions Re: (1) Notice Procedures; (2) Procedures for the Use, Sale
14 or Other Disposition of Assets; (3) Employment of Legal Counsel, Accountants,
15 Appraisers, Auctioneers and Brokers; and (4) Payment of Priority Wage Claims,
16 inter alia, authorizing employment of Coldwell Banker and other brokers, as real
17 estate broker, and establishing procedures for sales and notices (the "Omnibus
18 Order"). A true and correct copy of the Omnibus Order is attached hereto as Exhibit
19 "4" and incorporated herein by this reference.

20 9. Pursuant to the March 10, 2009, Order and the MMHIM Order, the
21 Receiver's duties include, among other things, liquidating property of the
22 Receivership Defendants and their wholly owned subsidiaries, if appropriate, and
23 paying all costs associated with such liquidation. This Motion relates to the sale of
24 one such asset.

25

26 Property Proposed To Be Sold

27 10. The Property consists of a single family dwelling commonly described
28 as a two-story bluff top home particularly described in the Preliminary Title Report

1 of Lawyers Title Insurance Corporation dated June 18, 2009 (the "Title Report").
 2 The improvements thereon are generally described as a 3,467 square foot residence
 3 with a pool, spa, two-story guest house, three car garage, and a wood deck with step
 4 down to beach level. A true and correct copy of the Title Report is attached hereto
 5 as Exhibit "5" and incorporated herein by reference.

6 11. As of March 4, 2009, the Property was encumbered by those liens and
 7 interests described in the Title Report. MMHIM is vested with record title to the
 8 Property. See Exhibit "5."

9 12. When I took possession of the Property, the Property was in the process
 10 of being remodeled and was subject to mechanics' and materialmen's liens
 11 (collectively, the "Contractor Liens"). See Exhibit "5" at pp. 8 and 9. I have
 12 resolved disputes as to amounts of the Contractor Liens, and to negotiate for the
 13 completion of the project, with a portion of the liens to be paid by me upon
 14 completion of services, and the balance to be paid directly through escrow.

15 13. With respect to any disputed liens, to the extent there are any, which
 16 may be claimed against the Property at the time of sale closing, all such disputed
 17 liens will attach to proceeds from the sale since it is more than likely that the
 18 aggregate value of any such liens is far less than the purchase price.

19 14. According to the Title Report and other documents available to the
 20 Receiver, the following liens are apparent or recorded against the Property:

<u>Date of Recordation</u>	<u>Claimant</u>	<u>Amount</u>	<u>Instrument No.</u>
January 28, 2009	Gerald J. Marcil Palos Verdes Investments, Inc. 43-D Malaga Cove Plaza Palos Verdes Estates, CA 90274	\$2,166,870.19	20090109511
March 4, 2009	Bilden Company and Jack Monroe c/o Mark Anchor Albert, Esq. Law Offices of Mark Anchor Albert 333 S. Grand Avenue, 25th Floor Los Angeles, CA 90071	\$165,891.97	09-421297

1	Not Recorded	New Century Iron Artisans 8904 Lankershim Boulevard Sun Valley, CA 91352	\$12,303.00	n/a
2	Not Recorded	Eclipse Heating & Air 7302 Canby Avenue Reseda, CA 91335	\$12,225.00	n/a
3	March 25, 2009	Security Network, Inc. 2701 E. Chapman Avenue, Suite 105 Fullerton, CA 92831	\$11,380.00	09-430172
4	May 1, 2009	Mike's Building Corp. 16046 Blythe Street Van Nuys, CA 91406	\$8,677.52	09-639453
5	Not Recorded	Blackwood Doors P.O. Box 291010 Los Angeles, CA 90029	\$8,634.00	n/a
6	March 26, 2009	Mega Electric 4825 Murietta Avenue Sherman Oaks, CA 91423	\$7,750.00	09-434130
7	March 25, 2009	Authentic Woodworks 11539 Tuxford Street Sun Valley, CA 91352	\$5,495.00	09-428983
8	Not Recorded	California Solar 65 W. Easy Street Suite 103 Simi Valley, CA 93065	\$2,900.00	n/a
9	March 25, 2009	YB Construction Services/ S.A.L Plumbing 3350 Coy Drive Sherman Oaks, CA 91423	\$2,225.00	09-433843

19 15. I have resolved the dispute as to the amount of the Marcil lien and to
20 satisfy the lien directly through escrow.

21 16. By this Motion, I am requesting authority to sell the Property free and
22 clear of all liens, claims and encumbrances and to consummate the sale by selling
23 and transferring title to the Property to the Purchaser pursuant to the MMHIM Order
24 authorizing the sale of MMHIM assets and to allow all liens to attach to the sale
25 proceeds. I propose to pay all undisputed liens and claims directly through escrow,
26 and by retaining 110% of the amount of all disputed amounts in escrow to secure
27 payment of the disputed liens and claims, pending resolution by further Court order
28 or agreement of the parties to the disputed claims.

1 Marketing Efforts

2 17. On or about March 30, 2009, I entered into a listing agreement with
3 Prudential Malibu Realty and Coldwell Banker (the "Brokers") for the marketing of
4 the Property (the "Listing Agreement"). Pursuant to the Listing Agreement, all
5 brokers' commissions on the sale of the Property was to be 4.5% of the purchase
6 price. A true and correct copy of the Listing Agreement is attached hereto as
7 Exhibit "6" and incorporated herein by reference.

8 18. On or about April 10, 2009, the Property was listed in the Multiple
9 Listing Service ("MLS") thereby giving notice to the public of the sale. In addition,
10 the Brokers placed full signage at the Property and advertised the property in the Los
11 Angeles Times, The Malibu Times, email flyers, and full-color brochures. The
12 Brokers also listed the Property on the following websites:

13 31610BroadBeachRoad.com, prumalibu.com, realtor.com, trulia.com, yahoo.com,
14 Frontdoor.com, aol.com, cyberhomes.com, themls.com, lycos.com, oodle.com,
15 hotpads.com, homeseekers.com, and realestate.com. In addition, I posted the
16 Property on diversifiedreceivership.com. The Brokers accompanied prospective
17 buyers' agents with their respective clients on fourteen (14) showings to the
18 Property resulting in three offers.

19 19. Based on a comparable sales appraised amount of \$5,750,000 in March
20 2009, the initial listing price of the Property was \$6,500,000.00. After
21 approximately eight weeks of many interested inquiries but no serious offers, I
22 reduced the listing price to \$5,950,000.00. I then received two competing offers and
23 after a series of offers and counteroffers, accepted (subject to Court approval) the
24 offer by the Polisky Living Trust ("Polisky"), upon the terms and conditions set
25 forth in that certain Counter-Offer dated June 23, 2009. Polisky's initial offer was
26 for \$5,300,000.00, and after two rounds of counter-offers, I received and accepted an
27 offer in the amount of \$5,700,000.00. A true and correct copy of the Counter-Offer

28 ///

1 (“Sale and Purchase Agreement”) is attached hereto as Exhibit “1” and incorporated
2 herein by reference.

3 20. The Purchase and Sale Agreement with Polisky was reached in
4 response to the Brokers’ marketing efforts and via arms-length negotiations between
5 the parties. To the best of the my knowledge, the Purchaser has no relationship to
6 DLG, AEI, MMHIM or Mr. Friedman. Purchaser has made an offer to purchase the
7 Property close to its fair value.

8

9 Terms of Proposed Sale

10 21. The purchase price of the Property is to be no less than \$5,700,000.00
11 subject to better bids received from Qualified Overbidders, and this Court’s
12 confirmation. The purchase price is subject to any credit for repairs as agreed to
13 between the Receiver and Purchaser without further order of the Court. The
14 proposed sale of the Property is on an “as is” and “where is” basis, without any
15 warranties or recourse whatsoever, except that title insurance is to be provided to
16 cover normal title conveyances. Specifically, aside from the normal title
17 contingencies, the sale will not include any contingencies.

18

19 Proposed Overbid Procedures

20 22. I have received at least one other offer in an amount less than that of
21 Polisky. I believe that this sale should be subject to overbid, to which condition
22 Polisky has agreed.

23 23. In order to allow for overbids and to maximize the benefit to the estate
24 and its creditors, I have drafted a *Statement of Procedures to Follow for*
25 *Overbidding on Real Property Located at 31610 Broad Beach Road, Malibu,*
26 *California 90265* (the “Statement re: Overbids”). A true and correct copy of the
27 proposed *Statement re: Overbids* is attached hereto as Exhibit “2” and incorporated
28 herein by reference.

1 24. As a means of identifying and certifying Qualified Overbidders, I have
2 also drafted a document entitled *Request to Qualify as Overbidder*. A true and
3 correct copy of the *Request to Qualify as Overbidder* is attached hereto as Exhibit
4 “2,” pp. 3 and 4, and incorporated herein by reference.

5 25. The Statement re: Overbids makes direct reference and incorporates by
6 reference the *Overbid Sale Agreement* to provide notice for all potential bidders the
7 terms of the sale to Qualified Overbidders. See Exhibit “2.”

8
9 Notice of Motion

10 26. Pursuant to the Omnibus Order, the Receiver will serve notice of this
11 Motion by mail to the Limited Service List and by posting the notice and the motion
12 on the Receiver’s website at www.diversifiedreceivership.com, on the Receiver’s
13 law firm website, and at the office of the Clerk of the Bankruptcy Court for the
14 Central District of California pursuant to Local Rule 6007-1(f) of said Bankruptcy
15 Court made applicable hereto by Local Rule 66-8 of this Court and the Omnibus
16 Order at ¶ 20. The Receiver will also advertise the sale in the Wall Street Journal
17 two (2) times between July 15, 2009, to the date of the hearing on this Motion. Gill
18 Decl. at ¶ 25.

19 27. I have or will provide a copy of Exhibit “2” to all people who have
20 expressed an interest in making an offer for the Property.

21 28. A true and correct copy of the proposed Notice of Sale is attached
22 hereto as Exhibit “7.”


23 29. A copy of the form of a proposed Order confirming sale to Polisky is
24 attached hereto as Exhibit “8.”

25 30. In the event that overbidders bid at the Sale Hearing, I have prepared an
26 alternate form of order. A copy of the form of a proposed Order confirming sale to
27 an overbidder is attached hereto as Exhibit “9.”

28 ///

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

3 Executed this 10th day of July 2009 at Los Angeles, California.

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David A. Gill

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COUNTER-OFFER

This agreement ("Agreement" or "Counter-Offer") is intended to set forth the terms and conditions of the complete contract for the purchase by and sale to the Polisky Living Trust (the "Buyer") from David A. Gill, solely in his capacity as Receiver in the matter of *Securities and Exchange Commission v. Diversified Lending Group, Inc., Applied Equities, Inc., and Bruce Friedman*, U.S. District Court, Central District of California, Case No. 2:09-cv-1533-R-JTLx (the "Seller" or "Receiver"), of the real property commonly known as 31610 Broad Beach Road, Malibu, California (the "Property"), vested of record in MMHIM, Inc., whose assets the Receiver is authorized to administer. When executed below, this Agreement will constitute conclusive evidence and the exclusive terms and conditions of the contract for such purchase and sale (the "Sale") of the Property and will supersede and replace in its entirety the Buyer's Offer dated June 16, 2009 and Counter Offers dated June 17, 2009 and June 22, 2009 (the "Offer"), and any oral or written negotiations since then.

PURCHASE PRICE; DEPOSIT; ESCROW. With respect to Term (C)(1) in the Offer, the purchase price for the Property shall be \$5,700,000.00 ("Purchase Price"). Buyer shall make an initial deposit of \$171,000.00 (the "Initial Deposit") in the form of cashier's check or wire transfer made payable and delivered to Nettie Becker Escrow (the "Escrow Holder") within two (2) business days after acceptance of this Counter-Offer by Buyer.

Buyer shall deliver to the Receiver, within three (3) days after mutual agreement upon this Counter-Offer, proof of committed funds available to Buyer sufficient to enable Buyer to consummate the acquisition contemplated herein, which proof shall be in the form of a letter of credit, loan commitment or other form acceptable to the Receiver in the Receiver's sole discretion. In the event that either (i) Buyer fails to timely provide any such proof, or (ii) the Receiver determines, in the Receiver's sole discretion, that any proof of funds provided to the Receiver by Buyer is unacceptable, the Receiver shall have the right, at the Receiver's option, to provide written notice to Buyer that this Counter-Offer is terminated. In the event that the Receiver exercises such termination right, this Counter-Offer shall terminate effective as of the date of Receiver's written notice to Buyer, whereupon the Initial Deposit (if theretofore deposited with the Escrow Holder) shall be returned to Buyer, and Buyer and Receiver shall each be relieved of any further obligation hereunder.

Escrow instructions corresponding to the terms of this Agreement shall be provided by the Escrow Holder and signed by the parties within five (5) business days after the date of Buyer's and Seller's receipt of said escrow instructions. Buyer and Seller shall deposit such documents and instruments with the Escrow Holder as and when reasonably required to complete the sale. Buyer shall be free to assign this Agreement to another person or entity ("Assignee") subject to Seller's prior review and written approval (which approval Seller may grant or withhold in its sole discretion), but Buyer shall remain liable hereunder, together with such Assignee, in the event that such Assignee fails to perform any of Buyer's obligations hereunder.

1. RECEIVERSHIP COURT APPROVAL; OVERBIDDING. The sale is subject to notice to parties in interest and approval by the U.S. District Court for the Central District of California presiding over the matter of *Securities and Exchange Commission v. Diversified Lending Group, Inc., Applied Equities, Inc., and Bruce Friedman*, Case No. 2:09-cv-1533-R-JTLx (the "Receivership Court"). The Receivership Court may consider all higher and better bids received by Seller through and including the hearing to confirm the sale. Payment of any and all real estate brokers' commissions is also subject to notice to parties in interest and approval by the Receivership Court. Buyer acknowledges and agrees that Seller may not seek to obtain the Receivership Court's approval if Seller has determined that it would be in the best interest of the above-named defendants' estate not to do so.

2. BUYER'S DUE DILIGENCE; CANCELLATION RIGHT. Buyer shall have ten (10) calendar days from the date of execution hereof to perform, complete, and satisfy all inspections, investigations, tests and reviews of reports, and to complete all due diligence which the Buyer desires for this Sale of the Property, including, but not limited to, performing and completing any geological, soil, structural, environmental, or other tests, inspections, and investigations desired by Buyer. Buyer may, not later than the end of that period, give Seller written notice of Buyer's election to withdraw from this Agreement because of Buyer's reasonable dissatisfaction with the results of any of those matters ("Notice of Cancellation"), in which event Buyer's and Seller's obligations under this Agreement shall be terminated and Buyer shall receive a full refund of the Initial Deposit. If Buyer fails to give such Notice of Cancellation within such period, all such contingencies shall be deemed automatically removed as set forth in Paragraph 4 and Buyer's obligation to proceed shall be non-contingent subject to Receivership Court approval of this Agreement and the Sale (including as set forth in Paragraph 8).

3. TITLE; TITLE INSURANCE. Within three (3) business days after acceptance of this Counter Offer, Lawyer's Title Company (the "Title Company") will be instructed to provide a preliminary report of the condition of title to the Property, including copies of underlying documents referred to in Schedule B thereof, for Buyer's review. Buyer may, not later than the end of the period in Paragraph 2, or until three (3) days after receipt of the preliminary report and underlying documents, whichever occurs later, in which to give Seller written notice ("Notice of Title Disapproval") that Buyer disapproves the condition of title with respect to a material matter(s) that interfere with the use of the Property for the purpose for which it is currently used or intended to be used. Such notice must refer to the specific exception(s) in Schedule B of the preliminary report and the specific underlying document(s) which are the basis for Buyer's disapproval. Within five (5) business days after receipt of such notice, Seller may, in Seller's sole discretion, either (i) cancel this Agreement and the sale, in which event Buyer's and Seller's obligations under this Agreement shall be terminated and Buyer shall receive a full refund of the Initial Deposit, or (ii) elect to correct the item(s) that were disapproved by Buyer, in which event the sale shall proceed. Seller may correct such item by any means that will result in the Title Company either removing the disapproved exception(s) from the preliminary report or providing title insurance coverage by endorsement against such exception(s). At the close of the sale, Seller shall convey and Buyer shall accept title to the Property as shown in Schedule B of the preliminary report, subject to any corrections as in this paragraph above, free and clear of all monetary liens, subject to the terms of the within contract. Seller shall pay the costs of a CLTA Standard Owner's policy of title insurance.

4. REMOVAL OF CONTINGENCIES; COURT CONFIRMATION; CLOSING; DELIVERY OF POSSESSION. If Buyer does not give Seller written Notice of Cancellation as and when provided in Paragraph 2, or Notice of Title Disapproval as and when provided in Paragraph 3, Buyer's silence shall be deemed acceptance and Buyer shall be deemed to have satisfied and removed all of Buyer's contingencies and to proceed with the Sale. Upon such removal of contingencies, Buyer shall be unconditionally obligated to proceed with the sale, subject only to Receivership Court confirmation as set forth below. Upon mutual agreement to this Counter-Offer and removal of all contingencies, Seller shall then file a motion with the Receivership Court to approve this sale. If the Receivership Court confirms the sale to Buyer, the closing shall take place no later than thirty-five (35) days after entry of the order approving the sale unless a longer period is required on Seller's part in the course of receivership administration. In no event shall the Sale close, if at all, later than

September 15, 2009. The closing shall occur on the date the deed transferring the Property to Buyer is recorded with the County Recorder where the Property is located. Upon closing, Seller shall deliver to Buyer copies of releases of liens by all contractors and subcontractors who were employed by the Seller with respect to the Property. Occupancy shall be delivered to Buyer upon Escrow Holder's confirmation of recording.

5. RECEIVERSHIP SALE. Buyer acknowledges that Seller is a Receiver appointed to administer, among other things, the above referenced Property, and is a party to this Agreement solely in that capacity. Seller and Brokers and agents have not and will not determine the condition or fitness for use of the Property for any particular purpose. The sale shall be "as is," "where is," "with all faults," and with no warranty by or recourse whatsoever to Seller or Brokers or agents herein. Transfer of the Property shall be by Quit Claim Deed. All parties acknowledge that Seller is a party to this Agreement solely in the capacity as Receiver of the above referenced estate and that in the event of any default in the performance of any of Seller's obligations under the Offer (as modified hereby) or any other agreement, or in the event that any other claim is asserted against the Seller, Receiver or the estate in connection with this transaction, the Receiver shall in no event have any personal liability whatsoever (whether in his individual capacity or otherwise), it being expressly understood and agreed that Buyer's sole recourse, if any, in such event shall be to the assets of such estate, as official liability.

6. TAXES; PRORATIONS; COSTS OF SALE. All real property taxes and assessments for the current tax year shown in the current County Tax Bill shall be prorated between Seller and Buyer and charged as of the closing date to the applicable accounts of Seller and Buyer. The sale shall be free and clear of any homeowner's association assessments and all real property taxes (other than those prorated as provided above) enforceable against the Property through the closing date of the sale. Escrow fees shall be split between Buyer and Seller in the manner customary in the County where the Property is located. Seller shall pay any real property transfer tax. Seller shall pay the cost of a Natural Hazard Disclosure Report, from a vendor selected by Seller, to be furnished to Buyer through escrow. Buyer shall pay and have sole responsibility for compliance with any requirements imposed on the Property or this sale by any governmental agency(ies), including compliance with any applicable governmental retrofit requirements. Buyer shall pay the cost of

recording the deed. Buyer and Seller shall each pay their own expenses of every other type except as specifically provided in this Agreement.

7. BROKERS. Seller is represented by Prudential Malibu Realty and Coldwell Banker. Buyer is represented by Hilton & Hyland. Subject to Receivership Court approval, Seller will pay a real estate broker's commission aggregating 4.5% of net sales price of the Property to the Brokers as follows: 1.125% to Prudential Malibu Realty (for Seller), 1.125% to Coldwell Banker (for Seller), and 2.25% to Hilton & Hyland (for Buyer) in connection with the closing of this sale. All such Brokers and agents are collectively referred to herein as the "Brokers." No commission or compensation shall be due or payable to Brokers in connection with this Agreement or sale except from the cash proceeds of an actual Sale of the Property that closes to Buyer. Buyer hereby represents and warrants that, other than the Brokers, Buyer has not dealt with any broker, finder or other person entitled to any fee, commission or other compensation in connection with the Sale and Buyer shall indemnify, defend and protect and hold Seller and the related estate harmless of, from and against any claims, demands, actions, causes of action, losses, liabilities and costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as Seller may suffer or incur in the event that any claims for any such fees, commissions or other compensation of any kind are hereafter asserted.

8. MATERIAL CHANGE OF CONDITION. In the event of any material change in the condition of the Property after the date of acceptance of this Counter-Offer, if Buyer demands repair of any resulting actual damage to the Property, Seller may, at Seller's sole option: (a) elect to terminate this Agreement, in which event Buyer's and Seller's obligations to buy or sell shall terminate and the full Initial Deposit shall be refunded to Buyer; or (b) make required repairs at the estate's expense; or (c) assign any insurance proceeds for the damage to the Property to Buyer as of the close of the sale; or (d) credit the cost of such repairs to Buyer through escrow, it being agreed that in the event that Seller elects and complies with subpart 8(b), (c) or (d), Buyer's obligation to proceed with the Sale shall be unaffected by any such material change in the condition of the Property.

9. REMEDY FOR BUYER'S OR SELLER'S FAILURE TO CLOSE. Buyer's sole remedy in the event that the sale fails to close as a result of Seller's inability or failure to close for any reason, including but not limited to the reason of failure to obtain approval of the sale by the Receivership

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Court, shall be the mutual release of Buyer's and Seller's obligations to buy or sell and a full refund of all money deposited by Buyer. In the event Buyer fails to close the sale for any reason other than Seller's default, after Buyer's contingencies have been removed as under Paragraphs 2 and 3, all money deposited by Buyer, but limited to 3% of the purchase price, shall be paid over to Seller and retained by Seller as liquidated damages without further legal action.

→ XRP XDP [Buyer's Initials]

10. RECEIVERSHIP COURT JURISDICTION. The District Court for the Central District of California shall have sole and exclusive jurisdiction to interpret and enforce the terms of this Agreement and Buyer hereby consents and submits to such exclusive jurisdiction. This Agreement shall be interpreted and enforced pursuant to the laws of the United States of America, and where state law is required to be applied, California law shall apply.

11. "AS-IS," "WHERE-IS" CONDITION; NO WARRANTIES. Buyer acknowledges and agrees that, to the maximum extent permitted by law, the sale contemplated by this Agreement is made "as-is," "where-is," and "with all faults," except as specifically provided in this Agreement. Seller and Brokers and agents herein have not made, do not make, and specifically negate and disclaim any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, concerning or respecting (i) value of the Property; (ii) income to be derived from the Property; (iii) suitability of the Property, or lack thereof for any activity or use which Buyer may intend to conduct thereon, including any possibilities or limitations for future development; (iv) habitability, merchantability, marketability, profitability, or fitness for a particular purpose, of the Property, or lack thereof; (v) manner, quality, state of repair, or lack of repair of the Property; (vi) nature, quality, or condition of the Property, or any portion, system, or component thereof, including without limitation, water, soil, and geology; (vii) compliance of the Property or its operation, or lack thereof, with any laws, ordinances, regulations, rules, or orders of any applicable governmental authority or body; (viii) manner or quality of engineering, design, construction or materials, if any, incorporated into the Property; (ix) compliance or lack of compliance with any land use, building and safety, or other laws, ordinances, regulations, rules, orders, or other requirements imposed or enforced by any governmental or non-governmental

body, including without limitation the Americans with Disabilities Act of 1990; (x) the presence or absence at, on, under, or adjacent to the Property, of materials described as “hazardous substances, hazardous materials, or toxic substances” or by similar terms under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§6901, et seq.), the Toxic Substance Control Act (15 U.S.C. §§2601, et seq.), the Clean Water Act (33 U.S.C. §§1251, et seq.), California Health and Safety Code §25117 or 25316, or other statutes and laws, all as amended and including all regulations issued thereunder; (xi) the content, completeness or accuracy of any Due Diligence materials or Preliminary Report regarding Title to the Property; (xii) the conformity or lack of conformity of the improvements to any plans or specifications for the Property, including any plans and specifications that may have been or may be provided to Buyer; (xiii) the conformity or lack of conformity of the Property to past, current, or future applicable zoning or building requirements; (xiv) any deficiency of any undershoring, drainage, or other aspects, systems, or components of or affecting the Property; (xv) the fact, if applicable, that all or a portion of the Property may be located on or near any natural hazard zone as determined by any governmental agency or body; (xvi) the existence of vested land use, zoning, or building entitlements affecting the Property or any other property; or (xvii) any other matter. Without in any manner limiting the foregoing, Buyer hereby acknowledges and agrees that (i) Seller’s Broker, has provided (and will hereafter provide) to Buyer various materials and information relating to the Property, including, without limitation, information and materials relating to the condition of the Property, and (ii) all such materials and information so provided to Buyer by Seller’s Broker shall, for all purposes of this Agreement, be deemed to have been disclosed to Buyer by the Seller, as well.

12. **BROKERS.** Brokers and agents herein have not and will not perform any inspections, investigations, or due diligence on behalf of Buyer unless otherwise specified herein. Buyer is informed that Buyer must arrange for any inspections and investigations desired by Buyer utilizing suitable third party professionals selected and compensated by Buyer. In no event shall Seller have any liability or responsibility for any representation, warranty, statement made, or information furnished by Brokers or agents herein, or any other person or entity,

concerning the Property, this Agreement, or any other matter, unless expressly set forth in writing and signed personally by Seller.

13. OPPORTUNITY TO INSPECT; BUYER'S SOLE RELIANCE. Buyer represents, warrants, acknowledges, and agrees that Buyer has been given the opportunity to inspect and investigate the Property and all other facts and circumstances deemed by Buyer relevant and significant, and to review information and documentation affecting the Property. In deciding to proceed with the sale, Buyer is relying solely on Buyer's own inspections and investigation of the Property (including by any outside professionals whom Buyer has elected to engage for such services) and review of such information and documentation, and not on any information provided or to be provided by Seller. Buyer further acknowledges and agrees that any information made available to Buyer or provided or to be provided by or on behalf of Seller with respect to the Property was obtained from a variety of sources and that neither Seller nor the Brokers and agents herein nor any other person has made or makes any representations as to the accuracy or completeness of such information. Buyer hereby fully and irrevocably releases all such sources and preparers of information and documentation affecting the Property which were retained or engaged by Seller or Brokers or agents from any and all claims that Buyer may now or hereafter have against such sources and preparers of information, for any costs, expenses, losses, liabilities, damages, demands, actions, or causes of action arising from any such information or documentation. NEITHER SELLER NOR BROKERS HAVE PROVIDED OR WILL PROVIDE ANY LEGAL OR TAX ADVICE TO BUYER. Buyer is informed that Buyer must obtain any such advice, if desired by Buyer, from independent professionals selected and engaged by Buyer.

14. PHYSICAL, GEOLOGICAL, PEST CONTROL, AND ENVIRONMENTAL INSPECTIONS AND INVESTIGATIONS.

A. BUYER SHALL CONDUCT THOROUGH PHYSICAL, GEOLOGICAL, PEST CONTROL, AND ENVIRONMENTAL INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS MAY BE DETERMINED BY BUYER, THROUGH QUALIFIED PROFESSIONALS SELECTED BY BUYER. Seller and Brokers

and agents herein strongly recommend that Buyer fully exercise and not waive such inspections and investigations.

B. Buyer shall select and employ, at Buyer's expense, a licensed engineer(s), architect(s), contractor(s), geologist(s), pest control licensee(s), environmental consultant(s), or other qualified professional(s) to make inspection(s) and investigations of the Property, including, but not limited to, (i) its general structure, plumbing, heating, air conditioning, electrical system, built-in appliances, cesspool/sewer/septic system, well, roof, soils, foundation, mechanical systems, pool, spa, related equipment and filters, sprinklers, and those other matters affecting the desirability of the Property (all if and only to the extent any such structures, systems, and components are presently a part of the Property); (ii) any actual or potential wood destroying pests or other conditions damaging to the Property or any portion thereof; (iii) environmental hazards, substances, products, or conditions, including without limitation, asbestos, formaldehyde, lead, lead-based paint, contaminated soil or water, fuel, chemical storage tanks, hazardous waste, electromagnetic fields, and radon gas, any of which may constitute a health risk; (iv) the presence or absence of any required governmental permits, inspections, applications, approvals, and certificates of occupancy, and compliance or lack of compliance with building codes and laws applicable to the Property; (v) plans and specifications for the Property; (vi) all applicable zoning, municipal, county, state, and federal, including those affecting the past, current, or any future use of the Property; (vii) deed restrictions and other matters of public record which may govern, restrict, condition, or prohibit the use, alteration, or development of the Property; and (viii) generally, without limitation, any and all other items and matters of whatsoever nature, character, or description, which Buyer deems material to Buyer's interests, in, on, or affecting the Property; and to approve or disapprove said inspection within the period and in the manner set forth in Paragraph 2. With respect to Term (C)(2) in the Offer, prior to closing, Seller will provide Buyer with a copy of the City of Malibu Certificate of Occupancy for the Property which covers all improvements in progress.

C. In the event Buyer is dissatisfied with the results of such inspection(s), Buyer may give written Notice of Cancellation to Seller strictly as and within the time provided in Paragraph 2. Buyer's failure to give such notice as and within the period specified therein