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6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

8 STATE OF ARIZONA ex rel. THOMAS)

L. WOOD, Superintendent of the)

9 Arizona Department of Financial)

Institutions,)

10 Plaintiff,)

11 v.)

12 LANDMARC CAPITAL &)

INVESTMENT COMPANY,)

13 Defendant.)

Cause No. CV2009-020595

PETITION NO. 13

PETITION FOR ORDER APPROVING
THE SALE OF REAL PROPERTY
LOCATED AT 9980 NORTH SHANNON
ROAD, TUCSON, ARIZONA

(Assigned to the Honorable Sam Myers)

14
15 Thomas L. Wood, Superintendent of the Arizona Department of Financial Institutions
16 and the court appointed Receiver of Landmarc Capital & Investment Company ("LCI"),
17 respectfully petitions as follows:

18 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order*
19 *to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial
20 Institutions as Receiver of LCI. On July 10, 2009, this Court entered its *Order Appointing*
21 *Permanent Receiver and Injunction* (collectively "Receivership Order"). The Receivership

1 Order authorized the Receiver to engage and employ Special Deputy Receivers to carry on
2 the day to day business of LCI. The Receiver has employed Lawrence J. Warfield as Special
3 Deputy Receiver.

4 2. In accordance with the Receivership Order, the Receiver has located and taken
5 possession of certain real property, located at 9980 North Shannon Road, Tucson, Arizona
6 85742 (“Property”). The Property is legally described in Exhibit “1” attached hereto and is
7 titled in the name of LCI. The Property is described by the appraiser as follows:

8 “The subject is an unfinished SFR with Extensive Interior Drywall
9 Damage, Numerous Shattered Windows, and Is Lacking Bathroom
10 Fixtures, Appliances and a Heating and Cooling System. Portions of the
Subject’s Roof Are Unfinished. The Subject Lacks Conventional Flooring
and Light Fixtures.”

11 LCI acquired fee title to this property pursuant to a Trustee’s Deed recorded with the Pima
12 County Recorder on October 29, 2008, as Docket 13423, Page 415. Although fee title is
13 vested in the name of LCI, the records of LCI indicate that this Property resulted from the
14 foreclosure of a deed of trust in which a beneficial interest had been acquired by several of
15 LCI’s investors. Although these investors do not hold legal title, they either assert a security
16 interest or an equitable claim to this Property. Accordingly, the net sale proceeds will be held
17 in trust until the claims of these investors are resolved by the Court.

18 3. The Property is not occupied and is not encumbered by any indebtedness, other
19 than obligations for real estate taxes and assessments. However, a Notice of Lis Pendens was
20 recorded by SEM Investments, LLC, (“SEM”) on this Property on December 29, 2008 with
21 the Pima county Recorder at Docket 13463, Page 639. The Receiver is unable at this time to

1 determine whether SEM holds a valid claim to this Property, and therefore requests that any
2 valid interest of SEM under the Notice of Lis Pendens attached to the net sales proceeds.

3 4. The sale contemplated under Exhibit "2" is conditioned upon, and will not take
4 place in the absence of, an order of this Court approving such sale after notice and a hearing.

5 5. On December 15, 2009, Colleen S. Smith of Sweetwater Appraisal Group,
6 PLLC, submitted to the Receiver an appraisal of the Property which indicates a fair market
7 value for the Property of \$675,000. The appraiser stated in her appraisal that Colleen S.
8 Smith has been issued Certificate No. 10506 by the State of Arizona as a Licensed Real
9 Estate Appraiser. The Receiver has agreed to pay this appraiser a fee of \$850.00 for this
10 appraisal and the appraiser has no known interest in any of the parties or in the sale of the
11 Property.

12 6. On June 2, 2009, LCI entered into a Listing Agreement with The Pepper Group
13 Diversified real estate company to market the Property, under which LCI agreed to pay a 6%
14 sales commission. This Listing Agreement was extended by the Receiver for an additional
15 180 days on or about December 22, 2009.

16 7. On January 27, 2010, the Receiver received an offer from Jane A. Cases to
17 purchase the Property for \$635,000.00 under terms that were not acceptable to the Receiver.
18 The Receiver thereafter submitted to Buyer a counter offer under terms that were not
19 acceptable by the Buyer. The Buyer then submitted a counter offer #2 which has been
20 accepted by the Receiver. These documents constitute the Purchase Agreement and are
21 attached hereto as Exhibit "2". The Purchase Agreement provides for the sale of the Property

1 for \$635,000.00, with a \$25,400.00 Earnest Money deposit. \$38,100.00 in additional funds
2 will be provided and applied towards Buyer's down payment at close of escrow. The
3 remaining balance due of \$571,500.00 is to be financed in the form of a conventional loan
4 obtained by the Buyer.

5 8. In accordance with this Court's Order Re: Petition Number 2, the Receiver:

6 a. Has mailed a copy of this Petition, the proposed order, and the Notice of
7 Hearing, to all persons on the Master Service List as indicated in the Proof of Mailing
8 filed herewith;

9 b. Intends to publish notice of this sale in the Arizona Business Gazette, a
10 newspaper of general circulation in Maricopa County.

11 9. The Receiver recommends that the Property be sold for the price and under the
12 terms set forth in the Purchase Agreement attached as Exhibit "2", which the Receiver
13 believes are in the best interests of the receivership estate.

14 WHEREFORE, the Receiver respectfully requests that the Court enter an order:

15 1. Approving the sale as set forth in the Purchase Agreement attached as Exhibit
16 "2" to this Petition of the Property legally described in Exhibit "1".

17 2. Authorizing Thomas Giallanza, as Deputy Receiver, to execute all necessary
18 documents in connection with the sale of the Property confirmed by the Court.

19 Respectfully submitted this 31st day of March, 2010.

20 GUTTILLA MURPHY ANDERSON, P.C.

21 /s/Patrick M. Murphy

Patrick M. Murphy

Attorneys for the Plaintiff