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6
7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8
9 IN AND FOR THE COUNTY OF MARICOPA

10 STATE OF ARIZONA ex rel. THOMAS)
11 L. WOOD, Superintendent of the)
Arizona Department of Financial)
Institutions,)
12 Plaintiff,)
13 v.)
14 LANDMARC CAPITAL &)
INVESTMENT COMPANY,)
15 Defendant.)

Cause No. CV2009-020595

PETITION NO. 14
PETITION FOR ORDER APPROVING
THE SALE OF REAL PROPERTY
LOCATED AT 5327 EAST ORCHID
LANE, PARADISE VALLEY, AZ 85253

(Assigned to the Honorable Sam Myers)

16 Thomas L. Wood, as the court appointed Receiver, respectfully petitions the Court as
17 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.

3 2. In accordance with the Receivership Order, the Receiver has located and taken
4 possession of certain real property, located at 5327 East Orchid Lane, Paradise Valley,
5 Arizona 85253 ("Property"). This Property is legally described in Exhibit "1" attached hereto
6 and is currently held in the name of Thomas J. Giallanza, as Deputy Receiver of Landmarc
7 Capital & Investment. Title was acquired in the name of the Deputy Receiver following a
8 Trustee Sale on December 16, 2009.

9 3. The property had been the security for a loan from Landmarc Capital &
10 Investment Company ("LCI") to Thomas Stewart in the original principal amount of
11 \$2,460,000 under a Deed of Trust recorded with the Maricopa County Recorder on December
12 13, 2007 as Document No. 2007-1294135. The borrower subsequently defaulted under the
13 loan and the Deed of Trust was foreclosed resulting in the above referenced Trustee's Deed.

14 4. Although fee title is vested in the name of LCI, the records of LCI indicate that
15 this Property resulted from the foreclosure of a deed of trust in which a beneficial interest had
16 previously been acquired by several of LCI's investors.¹ Although these investors do not

17 _____
18 ¹ The following assignments of beneficial interests under the Deed of Trust were recorded by LCI with the
19 Maricopa County Recorder.

<u>Recording Date</u>	<u>Assignee</u>	<u>Percentage</u>
01/08/08	TBM	17.024%
03/06/08	LCP	4.21%
03/19/08	TBM	3.634%

21 Prior to noticing the Property for sale at foreclosure, Landmarc recorded assignments of beneficial
interest reassigning back to LCI all beneficial interest under the Deed of Trust. Doc. Nos. 2009-0323953 and
2009-0323957. These reassignments were executed by LCI on behalf of TBM and LCP under a purported
power of attorney. The reassignment back to LCI could very well have been as a convenience to LCI in

1 hold legal title to the Property, they either assert a security interest or an equitable claim to
2 this Property. Accordingly, the net sale proceeds from the sale of this Property will be held in
3 trust until the claims of these investors are resolved by the Court.

4 5. The Property is not occupied and is not encumbered by any indebtedness, other
5 than obligations for real estate taxes and assessments.

6 6. Because the Property is a single family residence that necessitates the
7 expenditures of time and funds to provide security and insurance for the Property, the
8 continued holding of the Property is not necessary or appropriate to protect the interests of
9 any of the interested parties. Accordingly, the Receiver commenced efforts to market and sell
10 the Property.

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

13 8. On February 12, 2010, Robert D. Green of Sunstate Appraisal AZ submitted to
14 the Receiver an appraisal of the Property which indicated a fair market value for the Property
15 of \$675,000. Robert D. Green has been issued Certificate No. 11439 by the State of Arizona
16 as a Certified Residential Real Estate Appraiser. The Receiver has agreed to pay this
17 appraiser a fee of \$225.00 for this appraisal and the appraiser has no known interest in any of
18 the parties or in the sale of the Property.

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21 pursuing the foreclosure and was a practice followed in other foreclosures. The Receiver has not at this time
determined whether LCP and TBM funded this loan initially or was repaid their interest upon the reassignment
of their interest back to LCI.

1 9. In addition, the Receiver engaged the services of Anthony Kurth of Square One
2 Realty, to market the Property, under which the Receiver agreed to pay a 6% sales
3 commission, subject to the approval of this Court.

4 10. On March 10, 2010, the Receiver received an offer from Luke J. Dye and Laura
5 H. Dye to purchase the Property for \$675,000 under terms that were not acceptable to the
6 Receiver. The Receiver thereafter submitted to Buyer a counter offer which has been
7 accepted. These documents constitute the Purchase Agreement and are attached hereto as
8 Exhibit "2". The Purchase Agreement provides for the sale of the Property for \$700,000 in
9 cash and is conditioned upon approval by this Court.

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

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

14 b. Intends to publish notice of this sale in a newspaper of general
15 circulation within Maricopa County, the county in which this action is pending and the
16 Property is located.

17 12. The Receiver recommends that the Property be sold for the price and under the
18 terms set forth in the Purchase Agreement attached as Exhibit "2", which the Receiver
19 believes are in the best interests of the receivership estate and the persons who claim an
20 interest in the Property.

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

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

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

Respectfully submitted this 5th day of April, 2010.

GUTTILLA MURPHY ANDERSON, P.C.

/s/Patrick M. Murphy
Patrick M. Murphy
Attorneys for the Plaintiff

1157-001(93984)

LEGAL DESCRIPTION

LOT FIVE (5), MOCKINGBIRD LANE ESTATES, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA IN BOOK 131 OF MAPS PAGE 35.

APN# 168-55-006

Unofficial Document

Exhibit "1"

Home Brokers, Inc.

Page 1 of 8

RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT

Document updated:
May 2006



The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.



1. PROPERTY

- 1a. 1. BUYER: John J. Dye, Laura E. Dye (BUYER NAMES)
2. SELLER: ARIZONA DEPT OF FINANCIAL INST (SELLER NAME) *Linda Ann Giff* (Signature) identified in section 9c.
3. Buyer agrees to buy and Seller agrees to sell the real property with all improvements, fixtures, and appurtenances thereon and incidental thereto, plus the personal property described herein (collectively the "Premises").
- 1b. 5. Premises Address: 5327 E. Orchid Lane Assessor's #: 168-55-006
 6. City: Paradise Valley County: Maricopa AZ, Zip Code: 85253
 7. Legal Description: Lot 5 Mockingbird Lane Estates
- 1c. 8. \$ 675,000.00 Full Purchase Price, paid as outlined below
 9. \$ 10,000.00 Earnest money CHECK
 10. \$ 158,750.00 ADDITIONAL CASH AT CLOSE
 11. \$ 506,250.00 NEW CONVENTIONAL LOAN
 12. _____
- 1d. 13. Close of Escrow: Close of Escrow ("COE") shall occur when the deed is recorded at the appropriate county recorder's office. Buyer and Seller shall comply with all terms and conditions of this Contract, execute and deliver to 14. Escrow Company all closing documents, and perform all other acts necessary in sufficient time to allow COE to 15. occur on April 19 2010 ("COE Date"). If Escrow Company or recorder's office 16. is closed on COE Date, COE shall occur on the next day that both are open for business.
15. Buyer shall deliver to Escrow Company a cashier's check, wired funds or other immediately available funds to pay any down 16. payment, additional deposits or Buyer's closing costs, and instruct the lender, if applicable, to deliver immediately available funds 17. to Escrow Company, in a sufficient amount and in sufficient time to allow COE to occur on COE Date.
- 1a. 21. Possession: Seller shall deliver possession, occupancy, access to keys and/or means to operate all locks, mailbox, security 22. system/alarms, and all common area facilities to Buyer at COE or _____
 23. Broker(s) recommend that the parties seek appropriate counsel from insurance, legal, tax, and accounting professionals 24. regarding the risks of pre-possession or post-possession of the Premises.
- 1f. 25. Addenda Incorporated: Assumption and Carryback Buyer Contingency Domestic Water Well HUD forms
 26. H.O.A. Lead-Based Paint Disclosure Additional Clause On-site Wastewater Treatment Facility
 27. Other: AS-IS
- 1g. 28. Fixtures and Personal Property: Seller agrees that all existing fixtures on the Premises, and any existing personal property 29. specified herein, shall be included in this sale, including the following:
- 30. • free-standing range/oven
 - 31. • built-in appliances
 - 32. • light fixtures
 - 33. • ceiling fans
 - 34. • towel, curtain and drapery rods
 - 35. • draperies and other window coverings
 - 36. • attached floor coverings
 - flush-mounted speakers
 - attached fireplace equipment
 - window and door screens, sun screens
 - storm windows and doors
 - shutters and awnings
 - garage door openers and controls
 - attached TV/media antennas/satellite dishes
 - outdoor landscaping, fountains, and lighting
 - water-misting systems
 - solar systems
 - pellet, wood-burning or gas-log stoves
 - timers
 - mailbox
 - storage sheds

[Signature]
SELLER

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INITIALS
[Signature] *[Signature]*
BUYER BUYER




Exhibit "2"

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- 37. If owned by the Seller, the following items also are included in this sale:
- 38. - pool and spa equipment (including any
- 39. mechanical or other cleaning systems)
- security and/or fire systems and/or alarms
- water softeners
- water purification systems
- 40. Additional existing personal property included in this sale (if checked): refrigerator washer dryer
- 41. As described: _____
- 42. _____
- 43. Other: _____
- 44. _____
- 45. _____
- 46. Additional existing personal property included shall not be considered part of the Premises and shall be transferred with no
- 47. monetary value, and free and clear of all liens or encumbrances.
- 48. Fixtures and leased items NOT included: _____
- 49. IF THIS IS AN ALL CASH SALE, GO TO SECTION 3.

2. FINANCING

- 2a. 50. Loan Contingency: Buyer's obligation to complete this sale is contingent upon Buyer obtaining loan approval for the loan
- 51. described in the AAR Loan Status Report without conditions no later than COE Date. If Buyer is unable to obtain loan approval
- 52. without conditions by COE Date, Buyer shall deliver a notice of the inability to obtain loan approval without conditions to Seller or
- 53. Escrow Company no later than COE Date.
- 2b. 54. Unfulfilled Loan Contingency: This Contract shall be cancelled and Buyer shall be entitled to a return of the Earnest Money if
- 55. after diligent and good faith effort, Buyer is unable to obtain loan approval without conditions by COE Date. Buyer is aware that
- 56. failure to have the down payment or other funds due from Buyer necessary to obtain the loan approval without conditions and
- 57. close this transaction is not an unfulfilled loan contingency. Buyer acknowledges that prepaid items paid separately from earnest
- 58. money are not refundable.
- 2c. 59. Appraisal Contingency: Buyer's obligation to complete this sale is contingent upon an appraisal of the Premises by an appraiser
- 60. acceptable to lender for at least the sales price. If the Premises fails to appraise for the sales price, Buyer has five (5) days after notice
- 61. of the appraised value to cancel this Contract and receive a refund of the Earnest Money or the appraisal contingency shall be waived.
- 2d. 62. Loan Status Report: The AAR Loan Status Report ("LSR") with, at a minimum, the Buyer's Loan Information section completed,
- 63. describing the current status of the Buyer's proposed loan, is attached hereto and incorporated herein by reference.
- 2e. 64. Loan Application: Unless previously completed, within five (5) days after Contract acceptance, Buyer shall (i) complete, sign and
- 65. deliver to the lender a loan application with requested enclosures and documentation; (ii) grant lender permission to access
- 66. Buyer's Trimarq Residential Credit Report; and (iii) pay all required loan application fees.
- 2f. 67. Loan Processing During Escrow: Buyer agrees to diligently work to obtain the loan and will promptly provide the lender with all
- 68. additional documentation required. Buyer instructs the lender to provide loan status updates to Broker(s) and Seller. Buyer shall
- 69. sign all loan documents no later than three (3) days prior to the COE Date.
- 2g. 70. Type of Financing: Conventional FHA VA Assumption Seller Carryback _____
- 71. (if financing is to be other than new financing, see attached addendum.)
- 2h. 72. Loan Costs: Private Mortgage Insurance is required for certain types of loans and shall be paid by Buyer at COE in a manner
- 73. acceptable to lender. The following may be paid by either party:
- 74. Discount points shall be paid by: Buyer Seller Other _____
- 75. Discount points shall not exceed: 1 total points (Does not include loan origination fee)
- 76. A.L.T.A. Lender Title Insurance Policy shall be paid by Buyer Seller
- 77. Loan Origination Fee (Not to exceed 1.000 % of loan amount) shall be paid by Buyer Seller
- 78. Appraisal Fee, when required by lender, shall be paid by Buyer Seller Other _____
- 2i. 79. Other Loan Costs: In the event of an FHA or VA loan, Seller agrees to pay up to \$ _____ of loan
- 80. costs not permitted to be paid by the Buyer, in addition to the other costs Seller has agreed to pay herein. In addition, for VA
- 81. loans, Seller agrees to pay the escrow fee. All other costs of obtaining the loan shall be paid by the Buyer.

 _____
 SELLER

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- 2j. 82. Changes: Buyer shall immediately notify Seller of any changes in the loan program, financing terms, or lender described in the 83. LBR and shall only make any such changes without the prior written consent of Seller if such changes do not adversely affect 84. Buyer's ability to obtain loan approval without conditions, increase Seller's closing costs, or delay COE.
- 2k. 85. FHA Notice (FHA Buyer Initials Required): HUD does not warrant the condition of the property. By Initialing below, Buyer acknow- 86. edges receipt of Form HUD-62584-CN, "For Your Protection: Get a Home Inspection." Buyer further acknowledges that such 87. form was signed at or before the Contract date. Signed HUD-62584-CN is attached and made a part of this Purchase Contract.

(FHA BUYER'S INITIALS REQUIRED)

BUYER BUYER

3. TITLE AND ESCROW

- 3a. 89. Escrow: This Contract shall be used as escrow instructions. The Escrow Company employed by the parties to carry out the 90. terms of this Contract shall be:
 - 91. ESCROW CHOICE
- 3b. 92. Title and Vesting: Buyer will take title as determined before COE. Taking title may have significant legal, estate planning and tax 93. consequences. Buyer should obtain legal and tax advice.
- 3c. 94. Title Commitment and Title Insurance: Escrow Company is hereby instructed to obtain and deliver to Buyer and Seller 95. directly, addressed pursuant to 8f and 9c or as otherwise provided, a Commitment for Title Insurance together with 96. complete and legible copies of all documents that will remain as exceptions to Buyer's policy of Title Insurance ("Title 97. Commitment"), including but not limited to Conditions, Covenants and Restrictions ("CC&Rs"); deed restrictions; and 98. assessments. Buyer shall have five (5) days after receipt of the Title Commitment and after receipt of notice of any 99. subsequent exceptions to provide notice to Seller of any items disapproved. Seller shall convey title by general warranty 100. deed. Buyer shall be provided at Seller's expense an American Land Title Association ("ALTA") Homeowner's Title 101. Insurance Policy, or if not available, an ALTA Residential Title Insurance Policy ("Plain Language"/"1-4 units") or, if not 102. available, a Standard Owner's Title Insurance Policy, showing title vested in Buyer. Buyer may acquire extended coverage 103. at Buyer's own additional expense.
- 3d. 104. Additional Instructions: (i) Escrow Company shall promptly furnish notice of pending sale that contains the name and 105. address of the Buyer to any homeowner's association in which the Premises is located. (ii) If the Escrow Company is 106. also acting as the title agency but is not the title insurer issuing the title insurance policy, Escrow Company shall deliver 107. to the Buyer and Seller, upon deposit of funds, a closing protection letter from the title insurer indemnifying the Buyer 108. and Seller for any losses due to fraudulent acts or breach of escrow instructions by the Escrow Company. (iii) All 109. documents necessary to close this transaction shall be executed promptly by Seller and Buyer in the standard form used 110. by Escrow Company. Escrow Company shall modify such documents to the extent necessary to be consistent with this 111. Contract. (iv) Escrow Company fees, unless otherwise stated herein, shall be allocated equally between Seller and 112. Buyer. (v) Escrow Company shall send to all parties and Broker(s) copies of all notices and communications directed to 113. Seller, Buyer and Broker(s). (vi) Escrow Company shall provide Broker(s) access to escrowed materials and information 114. regarding the escrow. (vii) If an Affidavit of Disclosure is provided, Escrow Company shall record the Affidavit at COE.
- 3e. 115. Tax Prorations: Real property taxes payable by the seller shall be prorated to COE based upon the latest tax information available.
- 3f. 116. Release of Earnest Money: In the event of a dispute between Buyer and Seller regarding any Earnest Money deposited with 117. Escrow Company, Buyer and Seller authorize Escrow Company to release Earnest Money pursuant to the terms and conditions 118. of this Contract in its sole and absolute discretion. Buyer and Seller agree to hold harmless and indemnify Escrow Company 119. against any claim, action or lawsuit of any kind, and from any loss, judgment, or expense, including costs and attorney fees, 120. arising from or relating in any way to the release of Earnest Money.
- 3g. 121. Prorations of Assessments and Fees: All assessments and fees that are not a lien as of the COE, including homeowner's 122. association fees, rents, irrigation fees, and, if assumed, insurance premiums, interest on assessments, interest on encumbrances, 123. and service contracts, shall be prorated as of COE or Other
- 3h. 124. Assessment Liens: The amount of any assessment, other than homeowner's association assessments, that is a lien as of the 125. COE, shall be paid in full by Seller prorated and assumed by Buyer. Any assessment that becomes a lien after COE is 126. the Buyer's responsibility.
- 3i. 127. IRS and FIRPTA Reporting: Seller agrees to comply with IRS reporting requirements. If applicable, Seller agrees to complete, 128. sign, and deliver to Escrow Company a certificate indicating whether Seller is a foreign person or a non-resident alien pursuant to 129. the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller acknowledge that if the Seller is a foreign person, 130. the Buyer must withhold a tax equal to 10% of the purchase price, unless an exemption applies.

 SELLER

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4. DISCLOSURES



- 4a. 131. **Seller Property Disclosure Statement ("SPDS"):** Seller shall deliver a completed AAR SPDS form to the Buyer within five (5) days after Contract acceptance. Buyer shall provide notice of any SPDS items disapproved within the Inspection Period or 133. five (5) days after receipt of the SPDS, whichever is later.
- 4b. 134. **Insurance Claims History:** Seller shall deliver to Buyer a written five-year insurance claims history regarding Premises (or a 135. claims history for the length of time Seller has owned the Premises if less than five years) from Seller's insurance company or 136. an insurance support organization or consumer reporting agency, or if unavailable from these sources, from Seller, within five 137. (5) days after Contract acceptance. (Seller may obscure any reference to date of birth or social security number from the 138. document). Buyer shall provide notice of any items disapproved within the Inspection Period or five (5) days after receipt of the 139. claims history, whichever is later.
- 4c. 140. **Lead-Based Paint Disclosure:** If the Premises were built prior to 1978, the Seller shall: (i) notify the Buyer of any known 141. lead-based paint ("LBP") or LBP hazards in the Premises; (ii) provide the Buyer with any LBP risk assessments or inspections 142. of the Premises in the Seller's possession; (iii) provide the Buyer with the Disclosure of Information on Lead-based Paint and 143. Lead-based Paint Hazards, and any report, records, pamphlets, and/or other materials referenced therein, including the 144. pamphlet "Protect Your Family from Lead in Your Home" (collectively "LBP Information"). Buyer shall return a signed copy of 145. the Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards to Seller prior to COE.
 - 146. LBP Information was provided prior to Contract acceptance and Buyer acknowledges the opportunity to conduct LBP risk 147. assessments or inspections during Inspection Period.
 - 148. Seller shall provide LBP Information within five (5) days after Contract acceptance. Buyer may within ten (10) days or 149. _____ days after receipt of the LBP Information conduct or obtain a risk assessment or inspection of the Premises 150. for the presence of LBP or LBP hazards ("Assessment Period"). Buyer may within five (5) days after receipt of the LBP 151. Information or five (5) days after expiration of the Assessment Period cancel this Contract.
- 152. If Premises were constructed prior to 1978, (BUYER'S INITIALS REQUIRED)
 BUYER BUYER
- 153. If Premises were constructed in 1978 or later, (BUYER'S INITIALS REQUIRED)
 BUYER BUYER
- 4d. 154. **Affidavit of Disclosure:** If the Premises is located in an unincorporated area of the county, and five or fewer parcels of 155. property other than subdivided property are being transferred, the Seller shall deliver a completed Affidavit of Disclosure in 156. the form required by law to the Buyer within five (5) days after Contract acceptance. Buyer shall provide notice of any 157. Affidavit of Disclosure items disapproved within the Inspection Period or five (5) days after receipt of the Affidavit of 158. Disclosure, whichever is later.
- 4e. 159. **Changes During Escrow:** Seller shall immediately notify Buyer of any changes in the Premises or disclosures made herein, in 160. the SPDS, or otherwise. Such notice shall be considered an update of the SPDS. Unless Seller is already obligated by Section 161. 6a, or otherwise by this Contract or any amendments hereto, to correct or repair the changed item disclosed, Buyer shall be 162. allowed five (5) days after delivery of such notice to provide notice of disapproval to Seller.

5. WARRANTIES

- 5a. 163. **Seller Warranties:** Seller warrants and shall maintain and repair the Premises so that, at the earlier of possession or COE: (i) all 164. heating, cooling, mechanical, plumbing, and electrical systems (including swimming pool and/or spa, motors, filter systems, 165. cleaning systems, and heaters, if any), free-standing range/oven, and built-in appliances will be in working condition; (ii) all other 166. agreed upon repairs and corrections will be completed pursuant to Section 6j; (iii) the Premises, including all additional existing 167. personal property included in the sale, will be in substantially the same condition as on the date of Contract acceptance; and (iv) 168. all personal property not included in the sale and all debris will be removed from the Premises.
- 5b. 169. **Warranties that Survive Closing:** Seller warrants that Seller has disclosed to Buyer and Broker(s) all material latent defects and 170. any information concerning the Premises known to Seller, excluding opinions of value, which materially and adversely affect the 171. consideration to be paid by Buyer. Prior to the COE, Seller warrants that payment in full will have been made for all labor, 172. professional services, materials, machinery, fixtures, or tools furnished within the 150 days immediately preceding the COE in 173. connection with the construction, alteration, or repair of any structure on or improvement to the Premises. Seller warrants that the 174. information regarding connection to a sewer system or on-site wastewater treatment facility (conventional septic or alternative) is 175. correct to the best of Seller's knowledge.

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Page 4 of 9

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- 175. Buyer Warrants: Buyer warrants that Buyer has disclosed to Seller any information that may materially and adversely affect the Buyer's ability to close escrow or complete the obligations of this Contract. At the earlier of possession of the Premises or COE, Buyer warrants to Seller that Buyer has conducted all desired independent inspections and investigations and accepts the Premises. Buyer warrants that Buyer is not relying on any verbal representations concerning the Premises except disclosed as follows:
- 180. _____
- 181. _____

6. DUE DILIGENCE

- 182. Inspection Period: Buyer's Inspection Period shall be ten (10) days or _____ days after Contract acceptance. During the Inspection Period, Buyer, at Buyer's expense, shall (i) conduct all desired physical, environmental, and other types of inspections and investigations to determine the value and condition of the Premises; (ii) make inquiries and consult government agencies, lenders, insurance agents, architects, and other appropriate persons and entities concerning the suitability of the Premises and the surrounding area; (iii) investigate applicable building, zoning, fire, health, and safety codes to determine any potential hazards, violations or defects in the Premises; and (iv) verify any material multiple listing service ("MLS") information. If the presence of sex offenders in the vicinity or the occurrence of a disease, natural death, suicide, homicide or other crime on or in the vicinity is a material matter to the Buyer, it must be investigated by the Buyer during the Inspection Period. Buyer shall keep the Premises free and clear of liens, shall indemnify and hold Seller harmless from all liability, claims, demands, damages, and costs, and shall repair all damages arising from the inspections. Buyer shall provide Seller and Broker(s) upon receipt, at no cost, copies of all inspection reports concerning the Premises obtained by Buyer. Buyer is advised to consult the Arizona Department of Real Estate Buyer Advisory provided by AAR to assist in Buyer's due diligence inspections and investigations.
- 183. Square Footage: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE PREMISES, BOTH THE REAL PROPERTY (LAND) AND IMPROVEMENTS THEREON, IS APPROXIMATE. IF SQUARE FOOTAGE IS A MATERIAL MATTER TO THE BUYER, IT MUST BE INVESTIGATED DURING THE INSPECTION PERIOD.
- 184. Wood-Destroying Organism or Insect Inspection: IF CURRENT OR PAST WOOD-DESTROYING ORGANISMS OR INSECTS (SUCH AS TERMITES) ARE A MATERIAL MATTER TO THE BUYER, THESE ISSUES MUST BE INVESTIGATED DURING THE INSPECTION PERIOD. The Buyer shall order and pay for all wood-destroying organism or insect inspections performed during the Inspection Period. If the lender requires an updated Wood-Destroying Organism or Insect Inspection Report prior to COE, it will be performed at Buyer's expense.
- 203. Flood Hazard: Flood hazard designations or the cost of flood hazard insurance shall be determined by Buyer during the Inspection Period. If the Premises are situated in an area identified as having any special flood hazards by any governmental entity, the lender may require the purchase of flood hazard insurance. Special flood hazards may also affect the ability to encumber or improve the Premises.
- 207. Insurance: IF HOMEOWNER'S INSURANCE IS A MATERIAL MATTER TO THE BUYER, BUYER SHALL APPLY FOR AND OBTAIN WRITTEN CONFIRMATION OF THE AVAILABILITY AND COST OF HOMEOWNER'S INSURANCE FOR THE PREMISES FROM BUYER'S INSURANCE COMPANY DURING THE INSPECTION PERIOD. Buyer understands that any homeowner's, fire, casualty, or other insurance desired by Buyer or required by lender should be in place at COE.
- 211. Sewer or On-site Wastewater Treatment System: The Premises are connected to a:
 - 212. sewer system; septic system; alternative system.
 - 213. IF A SEWER CONNECTION IS A MATERIAL MATTER TO THE BUYER, IT MUST BE INVESTIGATED DURING THE INSPECTION PERIOD. If the Premises are served by a septic or alternative system, the AAR On-site Wastewater Treatment Facility Addendum is incorporated herein by reference.
 - 214. _____ (BUYER'S INITIALS REQUIRED) LSW WHD
BUYER BUYER
- 217. Swimming Pool Barrier Regulations: During the Inspection Period, Buyer agrees to investigate all applicable state, county, and municipal swimming pool barrier regulations and agree to comply with and pay all costs of compliance with said regulations prior to occupying the Premises, unless otherwise agreed in writing. If the Premises contains a swimming pool, Buyer acknowledges receipt of the Arizona Department of Health Services approved private pool safety notice.
 - 221. _____ (BUYER'S INITIALS REQUIRED) LSW WHD
BUYER BUYER

 _____
SELLER

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 Page 6 of 9
 Initials: LSW WHD
 BUYER BUYER



Residential Real Estate Purchase Contract >>

6h. 222. **BUYER ACKNOWLEDGMENT:** BUYER RECOGNIZES, ACKNOWLEDGES, AND AGREES THAT BROKER(S) ARE NOT QUALIFIED, NOR LICENSED, TO CONDUCT DUE DILIGENCE WITH RESPECT TO THE PREMISES OR THE SURROUNDING AREA. BUYER IS INSTRUCTED TO CONSULT WITH QUALIFIED LICENSED PROFESSIONALS TO ASSIST IN BUYER'S DUE DILIGENCE EFFORTS. BECAUSE CONDUCTING DUE DILIGENCE WITH RESPECT TO THE PREMISES AND THE SURROUNDING AREA IS BEYOND THE SCOPE OF THE BROKER'S EXPERTISE AND LICENSING, BUYER EXPRESSLY RELEASES AND HOLDS HARMLESS BROKER(S) FROM LIABILITY FOR ANY DEFECTS OR CONDITIONS THAT COULD HAVE BEEN DISCOVERED BY INSPECTION OR INVESTIGATION.

229.

(BUYER'S INITIALS REQUIRED) BUYER BUYER

6i. 230. **Inspection Period Notice:** Prior to expiration of the Inspection Period, Buyer shall deliver to Seller a signed notice of any items disapproved. AAR's Buyer's Inspection Notice and Seller's Response form is available for this purpose. Buyer shall conduct all inspections and investigations prior to delivering such notice to Seller and all Inspection Period items disapproved shall be provided in a single notice.

6j. 234. **Buyer Disapproval:** If Buyer, in Buyer's sole discretion, disapproves of items as allowed herein, Buyer shall deliver to Seller notice of the items disapproved and state in the notice that Buyer elects to either:

- 236. (1) immediately cancel this Contract and all Earnest Money shall be released to Buyer, or
- 237. (2) provide the Seller an opportunity to correct the items disapproved, in which case:
 - 238. (a) Seller shall respond in writing within five (5) days or _____ days after delivery to Seller of Buyer's notice of items disapproved. Seller's failure to respond to Buyer in writing within the specified time period shall conclusively be deemed Seller's refusal to correct any of the items disapproved.
 - 240. (b) If Seller agrees in writing to correct items disapproved, Seller shall correct the items, complete any repairs in a workmanlike manner and deliver any paid receipts evidencing the corrections and repairs to Buyer three (3) days or _____ days prior to COE Date.
 - 244. (c) If Seller is unwilling or unable to correct any of the items disapproved, Buyer may cancel this Contract within five (5) days after delivery of Seller's response or after expiration of the time for Seller's response, whichever occurs first, and all Earnest Money shall be released to Buyer. If Buyer does not cancel this Contract within the five (5) days as provided, Buyer shall close escrow without correction of those items that Seller has not agreed in writing to correct.

249. **VERBAL DISCUSSIONS WILL NOT EXTEND THESE TIME PERIODS.** Only a written agreement signed by both parties will extend response times or cancellation rights.

251. **BUYER'S FAILURE TO GIVE NOTICE OF DISAPPROVAL OF ITEMS OR CANCELLATION OF THIS CONTRACT WITHIN THE SPECIFIED TIME PERIOD SHALL CONCLUSIVELY BE DEEMED BUYER'S ELECTION TO PROCEED WITH THE TRANSACTION WITHOUT CORRECTION OF ANY DISAPPROVED ITEMS.**

6k. 254. **Notice of Non-Working Warranted Items:** Buyer shall provide Seller with notice of any non-working warranted item(s) of which Buyer becomes aware during the Inspection Period or the Seller warranty for that item(s) shall be waived. Delivery of such notice shall not affect Seller's obligation to maintain or repair the warranted item(s).

6l. 257. **Home Warranty Plan:** Buyer and Seller are advised to investigate the various home warranty plans available for purchase. The parties acknowledge that different home warranty plans have different coverage options, exclusions, limitations, service fees and most plans exclude pre-existing conditions.

260. A Home Warranty Plan will be ordered by Buyer or Seller with the following optional coverage

281. AVAC POOL to be issued by ABS at a cost not to exceed

282. \$1,000.00 to be paid for by Buyer Seller

283. Buyer declines the purchase of a Home Warranty Plan.

6m. 264. **Walkthrough(s):** Seller grants Buyer and Buyer's Inspector(s) reasonable access to conduct walkthrough(s) of the Premises for the purpose of satisfying Buyer that any corrections or repairs agreed to by the Seller have been completed, warranted items are in working condition and that the Premises is in substantially the same condition as of the date of Contract acceptance. If Buyer does not conduct such walkthrough(s), Buyer releases Seller and Broker(s) from liability for any defects that could have been discovered.

6n. 268. **Seller's Responsibility Regarding Inspections and Walkthrough(s):** Seller shall make the Premises available for all inspections and walkthrough(s) upon reasonable notice by Buyer. Seller shall, at Seller's expense, have all utilities on, including any propane, until COE to enable Buyer to conduct these inspections and walkthrough(s).

SELLER

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BUYER



Residential Resale Real Estate Purchase Contract >>

7. REMEDIES

- 7a. 271. Cure Period: A party shall have an opportunity to cure a potential breach of this Contract. If a party fails to comply with any provision of this Contract, the other party shall deliver a notice to the non-complying party specifying the non-compliance. If the non-compliance is not cured within three (3) days after delivery of such notice ("Cure Period"), the failure to comply shall become a breach of Contract.
- 7b. 275. Breach: In the event of a breach of Contract, the non-breaching party may cancel this Contract and/or proceed against the breaching party in any claim or remedy that the non-breaching party may have in law or equity, subject to the Alternative Dispute Resolution obligations set forth herein. In the case of the Seller, because it would be difficult to fix actual damages in the event of Buyer's breach, the Earnest Money may be deemed a reasonable estimate of damages and Seller may, at Seller's option, accept the Earnest Money as Seller's sole right to damages; and in the event of Buyer's breach arising from Buyer's failure to deliver the notice required by Section 2a, or Buyer's inability to obtain loan approval due to the waiver of the appraisal contingency pursuant to Section 2a, Seller shall exercise this option and accept the Earnest Money as Seller's sole right to damages. An unfulfilled contingency is not a breach of Contract.
- 7c. 283. Alternative Dispute Resolution ("ADR"): Buyer and Seller agree to mediate any dispute or claim arising out of or relating to this Contract in accordance with the REALTORS® Dispute Resolution System, or as otherwise agreed. All mediation costs shall be paid equally by the parties. In the event that mediation does not resolve all disputes or claims, the unresolved disputes or claims shall be submitted for binding arbitration. In such event, the parties shall agree upon an arbitrator and cooperate in the scheduling of an arbitration hearing. If the parties are unable to agree on an arbitrator, the dispute shall be submitted to the American Arbitration Association ("AAA") in accordance with the AAA Arbitration Rules for the Real Estate Industry. The decision of the arbitrator shall be final and nonappealable. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, either party may opt out of binding arbitration within thirty (30) days after the conclusion of the mediation conference by notice to the other and in such event either party shall have the right to resort to court action.
- 7d. 293. Exclusions from ADR: The following matters are excluded from the requirement for ADR hereunder: (i) any action brought in the Small Claims Division of an Arizona Justice Court (up to \$2,500) so long as the matter is not thereafter transferred or removed from the small claims division; (ii) judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or agreement for sale; (iii) an unlawful entry or detainer action; (iv) the filing or enforcement of a mechanic's lien; or (v) any matter that is within the jurisdiction of a probate court. Further, the filing of a judicial action to enable the recording of a notice of pending action ("lis pendens"), or order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the obligation to submit the claim to ADR, nor shall such action constitute a breach of the duty to mediate or arbitrate.
- 7e. 301. Attorney Fees and Costs: The prevailing party in any dispute or claim between Buyer and Seller arising out of or relating to this Contract shall be awarded their reasonable attorney fees and costs. Costs shall include, without limitation, attorney fees, expert witness fees, fees paid to investigators, and arbitration costs.

8. ADDITIONAL TERMS AND CONDITIONS


- 8a. 304. BUYER IS AWARE THIS PROPERTY IS BEING SOLD IN AS-IS CONDITION. SELLER TO MAKE
- 305. NO REPAIRS.
- 306. _____
- 307. _____
- 308. _____
- 309. _____
- 310. _____
- 311. _____
- 312. _____
- 313. _____
- 314. _____
- 315. _____

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Page 7 of 8

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Orchid



SELLER


BUYER

BUYER



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- 316. Risk of Loss: If there is any loss or damage to the Premises between the date of Contract acceptance and COE or possession, 317. whichever is earlier, by reason of fire, vandalism, flood, earthquake, or act of God, the risk of loss shall be on the Seller, provided, 318. however, that if the cost of repairing such loss or damage would exceed ten percent (10%) of the purchase price, either Seller or 319. Buyer may elect to cancel the Contract.
 - 320. Permission: Buyer and Seller grant Broker(s) permission to advise the public of this Contract.
 - 321. Arizona Law: This Contract shall be governed by Arizona law and jurisdiction is exclusively conferred on the State of Arizona.
 - 322. Time is of the Essence: The parties acknowledge that time is of the essence in the performance of the obligations 323. described herein.
 - 324. Compensation: Seller and Buyer acknowledge that Broker(s) shall be compensated for services rendered as previously agreed by 325. separate written agreement(s), which shall be delivered by Broker(s) to Escrow Company for payment at COE. If not previously paid, 326. If Seller is obligated to pay Broker(s), this Contract shall constitute an irrevocable assignment of Seller's proceeds at COE. If Buyer is 327. obligated to pay Broker(s), payment shall be collected from Buyer as a condition of COE. COMMISSIONS PAYABLE FOR THE 328. SALE, LEASING, OR MANAGEMENT OF PROPERTY ARE NOT SET BY ANY BOARD OR ASSOCIATION OF REALTORS, OR 329. MULTIPLE LISTING SERVICE, OR IN ANY MANNER OTHER THAN BETWEEN THE BROKER AND CLIENT.
 - 330. Copies and Counterparts: A fully executed facsimile or electronic copy of the Contract shall be treated as an original Contract. This Contract 331. and any other documents required by this Contract may be executed by facsimile or other electronic means and in any number of 332. counterparts, which shall become effective upon delivery as provided for herein, except that the Lead-Based Paint Disclosure Statement may 333. not be signed in counterpart. All counterparts shall be deemed to constitute one instrument, and each counterpart shall be deemed an original.
 - 334. Days: All references to days in this Contract shall be construed as calendar days and a day shall begin at 12:00 a.m. and end at 11:59 p.m.
 - 335. Calculating Time Periods: In computing any time period prescribed or allowed by this Contract, the day of the act or event from 336. which the time period begins to run is not included and the last day of the time period is included. Contract acceptance occurs on 337. the date that the signed Contract (and any incorporated counter offer) is delivered to and received by the appropriate Broker. Acts 338. that must be performed three days prior to the COE Date must be performed three full days prior (i.e., if COE Date is Friday the 339. act must be performed by 11:59 p.m. on Monday).
 - 340. Entire Agreement: This Contract, and any addenda and attachments, shall constitute the entire agreement between Seller and 341. Buyer, shall supersede any other written or oral agreements between Seller and Buyer and can be modified only by a writing 342. signed by Seller and Buyer. The failure to initial any page of this Contract shall not affect the validity or terms of this Contract.
 - 343. Subsequent Offers: Buyer acknowledges that Seller has the right to accept subsequent offers until COE. Seller understands that 344. any subsequent offer accepted by the Seller must be a backup offer contingent on the cancellation of this Contract.
 - 345. Cancellation: A party who wishes to exercise the right of cancellation as allowed herein may cancel this Contract by delivering 346. notice stating the reason for cancellation to the other party or to the Escrow Company. Cancellation shall become effective 347. immediately upon delivery of the cancellation notice.
 - 348. Notice: Unless otherwise provided, delivery of all notices and documentation required or permitted hereunder shall be in writing 349. and deemed delivered and received when (i) hand-delivered, (ii) sent via facsimile transmission, (iii) sent via electronic mail, if 350. email addresses are provided herein, or (iv) sent by recognized overnight courier service, and addressed to Buyer as indicated in 351. Section 8r, to Seller as indicated in Section 9a and to the Escrow Company indicated in Section 3s.
 - 352. Earnest Money: Earnest Money is in the form of: Personal Check Other: _____ 353. If applicable, Earnest Money has been received by Broker named in Section 8r and upon acceptance of this offer will be 354. deposited with: Escrow Company Broker's Trust Account
 - 355. Release of Broker(s): Seller and Buyer hereby expressly release, hold harmless and indemnify Broker(s) in this 356. transaction from any and all liability and responsibility regarding financing, the condition, square footage, lot lines, 357. boundaries, value, heat rolls, environmental problems, sanitation systems, roof, wood infestation, building codes, 358. governmental regulations, insurance or any other matter relating to the value or condition of the Premises. 359.
- (BUYER'S INITIALS REQUIRED) WHD WHD
- 360. Terms of Acceptance: This offer will become a binding Contract when acceptance is signed by Seller and a 361. signed copy delivered in person, by mail, facsimile or electronically, and received by Broker named in Section 8r 362. by March 11, 2010 at 5:00 a.m. p.m., Mountain Standard Time. Buyer 363. may withdraw this offer at any time prior to receipt of Seller's signed acceptance. If no signed acceptance is received by 364. this date and time, this offer shall be deemed withdrawn and the Buyer's Earnest Money shall be returned.
 - 365. THIS CONTRACT CONTAINS NINE PAGES EXCLUSIVE OF ANY ADDENDA AND ATTACHMENTS. PLEASE ENSURE THAT 366. YOU HAVE RECEIVED AND READ ALL NINE PAGES OF THIS OFFER AS WELL AS ANY ADDENDA AND ATTACHMENTS.



SELLER	SELLER
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BUYER	BUYER
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8r. 357. Broker on behalf of Buyer:

358. [AGENT'S SIGNATURE] [AGENT CODE] [FIRST NAME] [LAST NAME] [PHONE] [FAX] [EMAIL]
359. [ADDRESS] [CITY] [STATE] [ZIP CODE]
370. [PHONE] [FAX] [EMAIL]

8s. 371. Agency Confirmation: The Broker named in Section 8r above is the agent of (check one):
372. [X] the Buyer; [] the Seller; or [] both the Buyer and Seller

8t. 373. The undersigned agree to purchase the Premises on the terms and conditions herein stated and acknowledge receipt of a copy hereof including the Buyer Attachment.

374. [BUYER'S SIGNATURE] [BUYER'S NAME] [ADDRESS] [CITY] [STATE] [ZIP CODE]
375. [BUYER'S SIGNATURE] [BUYER'S NAME] [ADDRESS] [CITY] [STATE] [ZIP CODE]

9. SELLER ACCEPTANCE

9a. 378. Broker on behalf of Seller:

378. [AGENT'S SIGNATURE] [AGENT CODE] [FIRST NAME] [LAST NAME] [PHONE] [FAX] [EMAIL]
380. [ADDRESS] [CITY] [STATE] [ZIP CODE]
381. [PHONE] [FAX] [EMAIL]

9b. 382. Agency Confirmation: The Broker named in Section 9a above is the agent of (check one):
383. [] the Seller; or [] both the Buyer and Seller

9c. 384. The undersigned agree to sell the Premises on the terms and conditions herein stated, acknowledge receipt of a copy hereof and grant permission to Broker named on Section 8s to deliver a copy to Buyer.

385. [X] Counter Offer is attached, and is incorporated herein by reference. Seller should sign both this offer and the Counter Offer.
387. [] If there is a conflict between this offer and the Counter Offer, the provisions of the Counter Offer shall be controlling.

388. [SELLER'S SIGNATURE] [SELLER'S NAME] [ADDRESS] [CITY] [STATE] [ZIP CODE]
389. [SELLER'S SIGNATURE] [SELLER'S NAME] [ADDRESS] [CITY] [STATE] [ZIP CODE]

392. [] OFFER REJECTED BY SELLER: [] MONTH [] DAY [] YEAR [SELLER'S INITIALS]

For Broker Use Only:
Brokerage File Log No. [] Manager's Initials [] Broker's Initials [] Date []

Counter Offer No. 1

This is a Counter Offer by the Seller, Lawrence J. Warfield, Receiver, to the Offer by the Buyer dated March 10, 2010 ("Buyer's Offer"). In consideration of the mutual promises and covenants set forth in this Counter Offer, Seller agrees to sell and Buyer agrees to buy the Property described below on the terms and conditions set forth in this Counter Offer, and to the extent not inconsistent herewith, the terms and conditions set forth in the Buyer's Offer.

1. Property. The real property, which is the subject of this Counter Offer, is located at 5327 E. Orchid Ln, Paradise Valley, AZ 85253 ("Property").

2. Seller. The Seller is Lawrence J. Warfield, in his capacity as the Special Deputy Receiver appointed by the Superior Court of Arizona in the action entitled State of Arizona v. Landmarc Capital, et al CV2009-020595 ("Receivership Court"). The Taxpayer Identification Number for the Seller is 86-0959744. The Seller is the appointed as the Receiver of the Property.

3. Buyer. The Buyer is Luke J. Dye & Laura H. Dye

4. Purchase Price. The Purchase Price, which Buyer agrees to pay for the Property is \$700,000. The Purchase Price shall not be adjusted by any overage or shortage in area of the Property. The Purchase Price shall be paid as follows:

(a) Buyer shall deposit with Escrow Agent within two (2) days of the Buyer's acceptance of this Counter Offer a total of \$10,000 cash earnest money deposit (the "Earnest Money") which shall become non-refundable, except as otherwise provided in Paragraphs 8, 9, and 10 below. If Buyer does not so cancel this Agreement, and if Seller does not so cancel this Agreement, and, provided further, if Seller does not otherwise default hereunder, the Earnest Money shall be credited towards the Sales Price if Buyer purchases the Property.

5. Deed. At the Close of Escrow, Seller shall convey title to the Property to Buyer by Special Warranty Deed (the "Deed"), subject to taxes and assessments not delinquent, reservations in patents, all easements, rights-of-way, covenants, conditions, restrictions, declarations, all matters that an accurate survey or a physical inspection of the Property would disclose and all matters to which Buyer has agreed.

6. Disbursements. Upon the Close of Escrow, the full amount of the Purchase Price, less any closing costs that the Seller has expressly agreed to pay, shall be disbursed to Seller.

Buyer's Initials LJD
Buyer's Initials LHD

Seller's Initials LJW

7. Property Sold "As Is." The Property is being sold "AS IS" and the Seller is not providing any warranties. Buyer expressly acknowledges that there may be present on the Property asbestos in friable form, aluminum wiring, mold, or other conditions that might affect the Buyers decision to purchase the Property. Buyer further acknowledges that Buyer has not relied on any warranties, promises, projections, calculations, understandings or representations, express or implied, of Seller or of any agent or representative of Seller, relating to the Property, and, Buyer is acquiring the Property in its present condition and state of repair, "AS IS", with all defects, latent or apparent. Buyer further acknowledges that any information of any type which Buyer has received or may receive from Seller or Seller's agents is furnished on the express condition that Buyer shall make an independent verification of the accuracy (including without limitation calculations) of such information, all such information being furnished without any warranty or liability whatsoever. The Seller has acquired possession of the Property pursuant to Court order and has not occupied the Property and therefore Seller cannot and will not provide any Seller Disclosure Statements.

8. Additional Terms.

- (a) The cost of all inspections to be performed and paid by Buyer.
- (b) Buyer to provide evidence of funds sufficient to close escrow during the inspection period.
- (c) Line 91 shall be:
 - (i) Security Title Agency, c/o Sandy Rice, 480-998-1470

9. Court Receivership. The Buyer understands and acknowledges that the Seller was duly appointed the Receiver in the Receivership State of Arizona v. Landmarc Capital, et al CV2009-020595 (the "Receivership Court") and that the Property and this transaction are under the jurisdiction of the Receivership Court. The parties further understand and acknowledge that this Agreement is contingent on the approval of the Receivership Court and that the Receivership Court could decline to approve the Agreement for various reasons, including without limitation that the sale price is not fair or that a sale of the Property is not in the best interests of the estate.

10. Cancellation. In the event Seller is unable, within 60 days of the Buyer's acceptance of this Counter Offer, to obtain the approval of the Receivership Court, the Buyer or the Seller may elect in writing to cancel this Agreement and any Escrow and receive a full refund of the Earnest Money. Upon a cancellation in accordance with the provisions of this Paragraph, all documents deposited in Escrow by Seller and Buyer shall be returned to the party depositing the document, and this Agreement shall terminate.

Buyer's Initials
Buyer's Initials

Seller's Initials

11. Inspection. Buyer shall have one day (1) day from the date of the Buyer's acceptance of this Counter Offer to complete the Buyer's inspection of the Property, and Seller grants Buyer reasonable access to the Property for that purpose. If Buyer does not disapprove of the condition of the property within this period, Buyer shall be deemed to have accepted the condition of the Property. If Buyer timely disapproves of the condition of the Property in writing, then, upon notice to Seller of Buyer's objections, Seller shall have until Close of Escrow to eliminate the objectionable items; or, Seller may, within five (5) days from Buyer's notice, notify Buyer that Seller does not intend to eliminate the objectionable items, and Buyer's sole and exclusive remedy shall be to either waive his objection (in which case Close of Escrow shall occur subject to such matters) or to cancel this Agreement and receive a full refund of the Earnest Money.

12. Possession. Possession of the Property shall be delivered to Buyer at Close of Escrow.

13. Release and Indemnity. Seller is hereby released from all responsibility and liability regarding the condition (including, without limitation, the presence of environmental hazards or substances) or valuation or utility of the Property. Buyer agrees that Buyer will not attempt to assert any claims of liability against Seller for furnishing such information, nor shall Buyer assert any claims of liability against Seller for the existence of or damages arising out of the existence of asbestos, mold or other environmental hazards, and Buyer agrees to indemnify and hold Seller free and harmless for, from and against any and all such claims of liability. Buyer agrees to indemnify Seller and hold Seller harmless for, from and against all claims, damages, costs and expenses (including attorneys' fees) attributable, directly or indirectly, to Buyer's inspection of the Property or to the breach by Buyer of any obligation hereunder or the inaccuracy of any representation or warranty made by Buyer or in any instrument delivered pursuant hereto or in connection with the transactions contemplated hereby. This indemnity shall survive the Closing.

14. Assignment and Nomination. Buyer may not assign or otherwise transfer Buyer's rights under this Agreement without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion. Any such assignee shall accept in writing the terms and conditions of this Agreement and of any supplements or Escrow Instructions that may have been entered into as of the time of the assignment. In no event shall any assignment extend the Close of Escrow.

15. No Liability. Buyer agrees that no receivers, directors, officers, employees or agents of Seller have any personal obligation hereunder, and that such party shall not seek to assert any claim or enforce any rights against such bankruptcy trustees, directors, officers, employees or agents.

Buyer's Initials YGO
Buyer's Initials WHP

Seller's Initials JW

16. Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

17. Exclusive Jurisdiction of the Receivership Court. The Receivership Court shall have exclusive jurisdiction to resolve any dispute arising under this Agreement.

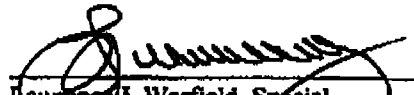
18. Close of Escrow. The sale shall close within 15 days of completion of the last of the requirements set forth in Paragraph 10 above.

19. Time of the Essence. Time is of the essence and unless the Buyer's acceptance of this Counter Offer is signed by the Buyer or an authorized representative and a signed copy of this Counter Offer delivered in person, by mail, or by facsimile and received by the Receiver, or by Anthony Kurth of Square One Realty on or before March 16, 2010 at 5 PM, Mountain Standard Time, or unless the Counter Offer has been previously withdrawn by the Receiver, this Counter Offer shall be considered withdrawn on the date and time set forth above in this Paragraph. Until this Counter Offer has been accepted as provided above, the Parties understand that the Property can be sold or leased to someone else or either Party may withdraw the offer to buy or sell the Property. The undersigned acknowledge receipt of a copy hereof.

20. Signed Original. In order to facilitate the filing of appropriate pleadings with the Receivership Court, the parties agree to execute at least one original of this Counter Offer and all other contract documents and to provide such originals to the Seller.

21. Entire Agreement. This agreement supersedes any other agreement, whether oral or in writing, between the parties regarding the subject of this agreement, and renders such other agreements between the parties null and void.

Dated: March 15, 2010


Lawrence J. Warfield, Special
Deputy Receiver, SELLER

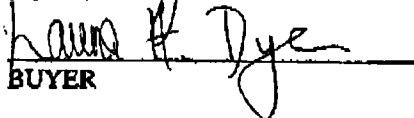
Acceptance

The Buyer accepts the above Counter Offer and agrees to the modified or additional terms and conditions in the above Counter Offer and acknowledges receipt of a copy hereof.

Dated: 3-15-10


BUYER

Dated: 3/15/10


BUYER