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5 Attorneys for the Receiver
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
6
IN AND FOR MARICOPA COUNTY
7

8 STATE OF ARIZONA ex rel. LAUREN)
KINGRY, Superintendent of the Arizona)
Department of Financial Institutions,)
9 Plaintiff,)
10 v.)
11 LANDMARC CAPITAL &)
INVESTMENT COMPANY,)
Defendant.)

Cause No. CV2009-020595

ORDER ESTABLISHING PROCEDURES
FOR THE ADJUDICATION OF CLAIMS

ORDER RE: PETITION NO. 27

(Assigned to Judge Sam Myers)

Guttilla Murphy Anderson, P.C.
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15 The Receiver having filed Petition No. 27, and served it on the persons appearing on
16 the Master Service List, and the Court having considered same, and it appearing to the Court
17 that the matters requested by Petition No. 27 are reasonable, just and appropriate:

18 NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

19 1. **DEFINITIONS**

20 Unless the contexts otherwise requires, the following terms shall have the meanings
21 specified below:

1.1 **ADFI Claims** Any claim by the Arizona Department of Financial Institutions

1 pursuant to A.R.S. §6-131.01(B) for payment out of Receivership Assets.

2 1.2 **Administrative Claim**. Every cost or expense incurred on or after June 24,
3 2009 on behalf of the Receiver or Landmarc, excluding ADFI Claims.

4 1.3 **Approved Claim**. A Claim that has been filed with the Receiver and has been
5 approved by the Court.

6 1.4 **Claim**. A Claim is any of the following, regardless of whether or not it is the
7 subject of pending litigation or has been reduced to judgment:

8 a. Any right to payment, liquidated, unliquidated, fixed, contingent,
9 matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured,
10 which right arose or accrued prior to the Receivership Date; or

11 b. Any right to an equitable remedy for breach of performance if such right
12 gives rise to a right of payment, whether or not such right to an equitable remedy is
13 reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed,
14 where such right arose or accrued prior to the Receivership Date; or

15 c. Any right to payment arising from the rejection by the Receiver of an
16 executory contract or as a result of any Receivership Entity's failure to complete its
17 obligations under a lease.

18 1.5 **Claimant**. A person entitled to assert a Claim against any Receivership Entity
19 or against any Receivership Assets or any other property in the possession or control of the
20 Receiver.

21 1.6 **Claims Bar Date**. September 24, 2010.

1 1.7 **Claims Report.** The Receiver’s report filed with the Court describing the
2 Claims received by the Receiver and setting forth his recommendations concerning those
3 Claims.

4 1.8 **Court.** The Superior Court of the State of Arizona for Maricopa County, in
5 Cause No. CV2009-020595.

6 1.9 **Proof of Claim.** A Proof of Claim form provided by the Receiver in
7 substantially the same form as Exhibit “A-1”, “A-2” or “A-3” to *Petition No. 27*.

8 1.10 **Receivership Assets.** Receivership Assets shall include the following:

9 a. All Receivership Assets as defined by the orders of the Court, including
10 without limitation loans and real estate owned, controlled, managed or serviced by a
11 Receivership Entity on June 24, 2009.

12 b. Proceeds, product, offspring, rents, interest or profits of or from
13 Receivership Assets.

14 c. All interest earned and paid to the Receiver on Receivership Assets.

15 1.11 **Receiver.** Lauren Kingry, Superintendent of the Arizona Department of
16 Financial Institutions.

17 1.12 **Receivership Date.** June 24, 2009.

18 1.13 **Receivership Entity.** The following:

19 a. Landmarc Capital & Investment Company (“Landmarc”);

20 b. Hayden Investments, LLC (“Hayden”);

21 c. Desert Trails Holdings, LLC (“Desert Trails”); and

1 d. Arizona Valuation Company, LLC
2 1.14 **Secured Claim.** A Claim to the extent that it is secured by a properly perfected
3 lien on Receivership Assets.

4 2. **NOTICE OF RIGHT TO FILE CLAIMS AND CLAIMS BAR DATE**

5 2.1 **Notice to Claimants.** The Receiver shall notify each Claimant of the Claims
6 Bar Date and of the Claimant's right to file a Claim as provided herein by mailing to the
7 Claimant a Notice to Claimants in a form substantially similar to Exhibit "B-1" to the
8 Receiver's *Petition No. 27*. The Notice to Claimants shall be accompanied by a copy of the
9 applicable Proof of Claim form, and any other information the Receiver deems appropriate
10 and shall be deposited in the United States mail, postage pre-paid, addressed to the Claimant
11 at the most recent address contained in the records of the Receiver within ten days of the
12 entry of this Order.

13 2.2 **Notice by Publication.** The Receiver shall also publish a copy of the Notice by
14 Publication in a form substantially similar to Exhibit "B-2" to the Receiver's *Petition No. 27*:

15 a. At least once for four consecutive weeks in a publication with statewide
16 circulation within the State of Arizona with the first of such publications appearing
17 within ten days of the entry of this Order; and

18 b. At least once in a publication with national circulation within twenty
19 days of the entry of this Order.

20 3. **FILING OF CLAIMS**

21 3.1 **Filing a Claim.** Any person asserting a Claim against a Receivership Entity,

1 the Receiver, or the Receivership Assets or any other property in the possession of the
2 Receiver, regardless of whether the Claim has been acknowledged by the Receiver or is the
3 subject of pending litigation, shall complete, sign under oath, and file with the Receiver a
4 Proof of Claim on or before the Claims Bar Date. The Proof of Claim shall be set forth on
5 the form provided by the Receiver and shall contain all of the information requested in the
6 form.

7 3.2 **Deadline for Filing a Claim.** Except as provided below, all Proofs of Claim
8 shall be filed with the Receiver on or before the Claims Bar Date and any claim against a
9 Receivership Entity, the Receiver, or the Receivership Assets or any other property in the
10 possession or control of the Receiver, not set forth in a timely filed Proof of Claim shall be
11 forever barred. A Proof of Claim shall be deemed filed on the date it is received by the
12 Receiver. The Receiver, in his capacity as the Manager of Landmarc Capital Partners, LLC
13 (“Partners”), shall file on or before the Claims Bar Date a claim on behalf of Partners with
14 respect to loan participation interests that the Receiver reasonable believes that Partners
15 asserts, and all other Proofs of Claim for claims asserted by Partners shall be filed as provided
16 herein within 60 days following the replacement of the Receiver as the Manager of Partners.

17 3.3 **Place to File a Claim.** Each Proof of Claim shall be filed with the Receiver by
18 mailing postage prepaid a properly completed Proof of Claim together with all required
19 supporting documentation to the Receiver at the following address:

20 Landmarc Receiver
21 P.O. Box 14050
 Scottsdale, Arizona 85267

1 3.4 **Prohibition Against Filing Claim With The Court.** No Claim shall be filed
2 with the Court and any Claim so filed shall not be considered properly filed as required under
3 this Order and may subject the person filing the Claim to being held in contempt of court.

4 3.5 **Supporting Documentation.** Each Claim shall include all documentation
5 supporting the claim as may be required by the Receiver. Original documents should not be
6 filed with the Claim unless expressly requested by the Receiver. If a supporting document is
7 not available, the Claimant must attach an explanation of why the document is not available.
8 Claims filed by Lender Claimants, unless the Lender Claimant accepts the amounts set forth
9 by the Receiver, shall include copies of personal checks, cashiers checks, wire transfer
10 advices and other documents evidencing the transfer of funds loaned to the Receivership
11 Entity, copies of each signed participation agreement or warehouse credit facility agreement,
12 and a chronological accounting of all money received by the Claimant from any Receivership
13 Entity, whether such payments are denominated as the return of principal, interest,
14 commissions, late fees, or otherwise.

15 4. **LENDER CLAIMS**

16 4.1 A Lender Claim for principal or accrued interest as of the Receivership Date
17 due to the Claimant under a Warehouse Credit Facility Agreement and claims to ownership or
18 a perfected security interest pursuant to such an agreement shall be made on a form provided
19 by the Receiver for that purpose (“WCF Lender”). The Proof of Claim by a WCF Lender
20 shall included:

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1 a. A Schedule of all principal and accrued interest owed to the WCF
2 Lender by LCI as of the Receivership Date containing such information as may be
3 required by the Receiver;

4 b. A Schedule of each loan and REO in which the WCF Lender claims an
5 ownership or security interest containing such information as may be required by the
6 Receiver together with the value attributed to that interest;

7 c. A calculation of the general unsecured claim if any after deducting from
8 the principal and interest owed under the WCF Agreement the values for the
9 ownership or security interests claimed by the WCF Lender, provided that if the
10 Receiver determines that value attributed to the WCF Lender's claimed interest is
11 below its market value the Receiver may elect to acquire the interest for the value
12 attributed to the interest by the WCF Lender rather than distribute the interest to the
13 WCF Lender; and

14 d. All supporting documentation as may be required by the Receiver.

15 4.2 A Lender Claim arising under a loan participation agreement to a specific
16 percentage beneficial ownership or fee title, or both, of a loan or REO, shall be made on a
17 form provided by the Receiver for that purpose ("Loan Participant Lender"). The Proof of
18 Claim by a Loan Participant Lender shall include:

19 a. A Schedule of each loan and REO in which the Loan Participant Lender
20 claims an ownership interest containing such information as may be required by the
21 Receiver; and

1 b. All supporting documentation as may be required by the Receiver.

2 **5. OTHER CLAIMS**

3 5.1 A Claimant asserting a Claim other than claims covered by Section 4, shall be
4 made on the general purpose form provided by the Receiver.

5 **6. SECURED CLAIMS**

6 6.1 A Claimant asserting a Secured Claim shall demonstrate by credible evidence
7 that in accordance with applicable laws, the Claimant possesses a valid and perfected security
8 interest in a Receivership Asset. If a Secured Claim is approved by the Court, the Claimant
9 making that claim shall be entitled, to the extent of the secured interest, to receive the asset in
10 which the secured interest exists or the proceeds therefrom, after reimbursement to the
11 Receiver of such costs or expenses as the Court may determine.

12 **7. POST RECEIVERSHIP INTEREST**

13 No claim for interest owed to the Claimant by a Receivership Entity on or after the
14 Receivership Date shall be allowed by the Court.

15 **8. REDUCTION OF CLAIMS BY AMOUNTS RECEIVED**

16 As part of his recommendation on each claim, the Receiver shall identify the amounts,
17 if any, that should be offset or deducted from the claim or paid to the Receiver by the
18 Claimant as a condition for the release of his interest in a loan or REO and the reasons for
19 such recommendations.

20 **9. RECEIVER'S CLAIMS REPORT AND THE COURT'S FINAL
ADJUDICATION OF CLAIMS**

21 9.1 **Claims Listing.** Within twenty days of the Claims Bar Date, the Receiver shall

1 file with the Court and make available on the Receivership Website a listing setting forth all
2 Claims, other than Administrative Claims and ADFI Claims, filed with the Receiver with the
3 name of the claimant, the claim number, and the amount of the claim.

4 9.2 **Claims Reports.** The Receiver shall file with the Court and make available on
5 the Receivership Website one or more reports setting forth the Receiver's final
6 recommendations concerning each of the timely filed Claims ("Claims Report"). The
7 Receiver may file separate Claims Reports for each type of claims such as claims by WCF
8 Lenders, claims by Loan Participation Lenders, and all other claims.

9 9.3 **Notice to Claimants.** The Receiver shall notify each Claimant of the
10 Receiver's recommendation concerning the Claimant's Claim in writing and deposited in the
11 United States mail, postage pre-paid, addressed to the Claimant at the most recent address
12 contained in the records of the Receiver on or before the date the Receiver files with the
13 Court his Claims Report setting forth his recommendation on the Claimant's Claim. This
14 notice may be made by serving a copy of the Claims Report or by a written document
15 describing the Receiver's recommendation on the Claimant's Claim. At the time of filing
16 each Claims Report, the Receiver shall mail a Notice of Filing Claims Report to each person
17 who has timely filed a proof of claim, which notice shall briefly describe the subject of the
18 Claims Report and indicate that the Claims Report is available for inspection on the
19 Receivership Website or is available for a fee from the Receiver upon written request.

20 9.4 **Service of the Claims Report.** Each Claims Report shall be served on all
21 persons appearing on the Master Service List in the same manner as for service of petitions

1 filed by the Receiver.

2 9.5 **Copy of Claims Listing and Claims Reports.** A copy of the Claims Listing
3 and each Claims Report shall be made available on the Receivership Website. In addition,
4 every Claimant shall have the right to obtain a paper copy of the Claims Listing and each
5 Claims Report; however, the Receiver may charge a reasonable fee for providing a copy of
6 the document, which fee shall include at least an amount equal to the cost of copying and
7 postage.

8 9.6 **Objections.** All objections to any part of the Claims Report may be filed by
9 any Claimant and shall be filed with the Receiver and not with the Court. The objections
10 shall be set forth in writing, include all documents in support of the objection, and be
11 deposited in the United States mail on or before the twentieth calendar day following the date
12 of the Claim Report to which the objection is directed, postage pre-paid, addressed to the
13 Receiver at:

14 Landmarc Receiver
15 P.O. Box 14050
16 Scottsdale, Arizona 85267

17 9.7 **Filing of Final Recommendations and Response to Objections by the**
18 **Receiver.** The Receiver shall file with the Court no later than thirty days following the date
19 the objections are due to a Claims Report, a petition setting forth the Receiver's final
20 recommendation on the Claims covered by the Claims Report together with a copy of all
21 timely objections received by the Receiver relating to the claims covered by the Claims
Report and the Receiver's response to those objections, and shall serve a copy of same

1 together with a notice of hearing for the Court's hearing on the petition on all persons
2 appearing on the Master Service List and on all persons who served the Receiver with
3 objections to the claims covered by the Claims Report and all Claimants whose Claims were
4 objected to.

5 9.8 **Final Adjudication of Claims.** The Court may hold a hearing on objections to
6 the Claims Report upon 10 days written notice to each person filing an objection to the
7 Claims Report and each Claimant whose claim is objected to. Following the Court's hearing
8 on a Claims Report, the Court shall enter an order approving or disapproving the claims filed
9 with the Receiver which are the subject of the report.

10 10. **MISCELLANEOUS**

11 10.1 Claim shall be filed on or before the Claims Bar Date, except that:

12 a. Administrative Claims for administrative expenses shall be filed with the
13 Receiver within sixty days from the date incurred;

14 b. Administrative Claims by the Receiver or the Receiver's agents,
15 regardless of the date incurred, shall not be subject to a Claims Bar Date.

16 10.2 The Receiver, or any Claimant or other party in interest may file an objection to
17 any Claim as provided in this Order.

18 10.3 All Administrative Claims shall be paid by the Receiver in accordance with the
19 prior orders of this Court, or where required, by petition and order of the Court. All
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10.4 Approved Claims, other than Administrative Claims, shall be paid as provided
by further order of the Court.

Dated this 6 day of August, 2010.

~~HONORABLE SAM J. MYERS~~
Judge of the Superior Court

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